

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 12
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY,) San Francisco, California
) Thursday, May 9, 2019
Debtors.) 9:30 AM
)

APPLICATION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS FOR AUTHORITY TO
RETAIN AND EMPLOY CENTERVIEW
PARTNERS LLC AS INVESTMENT
BANKER, EFFECTIVE AS OF
FEBRUARY 15, 2019 [1213];

APPLICATION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
PURSUANT TO 11 U.S.C. SECTION
1103 AND FED. R. BANKR. P.
2014 AND 5002 TO RETAIN AND
EMPLOY LINCOLN PARTNERS
ADVISORS LLC AS FINANCIAL
ADVISER EFFECTIVE AS OF MARCH
1, 2019 [1134];

APPLICATION TO EMPLOY GROOM
LAW GROUP, CHARTERED AS
SPECIAL EMPLOYEE BENEFITS
COUNSEL APPLICATION PURSUANT
TO 11 U.S.C. SECTION 327)E
AND FED. R. BANKR. P. 2014(A)
AND 2016 FOR AUTHORITY TO
RETAIN AND EMPLOY GROOM LAW
GROUP, CHARTERED AS SPECIAL
EMPLOYEE BENEFITS COUNSEL FOR
THE DEBTS EFFECTIVE AS OF THE
PETITION DATE FILED BY PG&E
CORPORATION [1527];

APPLICATION TO EMPLOY AXIOM
ADVISORS AS GOVERNMENT
AFFAIRS CONSULTANT BY THE
OFFICIAL COMMITTEE OF

1 UNSECURED CREDITORS,
2 EFFECTIVE AS OF MATCH 15,
3 2019 FILED BY OFFICIAL
4 COMMITTEE OF UNSECURED
5 CREDITORS [1524];

6 APPLICATION OF THE OFFICIAL
7 COMMITTEE OF TORT CLAIMANTS
8 PURSUANT TO 11 U.S.C. SECTION
9 1103 AND FED. R. BANKR. P.
10 2014 AND 5002 TO RETAIN AND
11 EMPLOY DEVELOPMENT
12 SPECIALISTS, INC. AS A
13 FINANCIAL ADVISOR EFFECTIVE
14 AS OF MARCH 20, 2019 [1461];

15 MOTION FOR RELIEF FROM STAY
16 FILED BY VALERA REFINING
17 COMPANY-CALIFORNIA [315];

18 MOTION PURSUANT TO 11 U.S.C.
19 SECTION 363(B) AUTHORIZING
20 DEBTORS TO PAY THE FEES AND
21 EXPENSES OF SIMPSON THACHER &
22 BARTLETT LLP AS COUNSEL TO
23 THE INDEPENDENT DIRECTORS OF
24 PG&E CORP. FILED BY PG&E
25 CORPORATION [1182];

MOTION TO FILE REDACTED
DOCUMENT AND TO FILE
DOCUMENTS UNDER SEAL FILED BY
VALERO REFINING COMPANY-
CALIFORNIA [1862]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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1 SAN FRANCISCO, CALIFORNIA, THURSDAY, MAY 9, 2019, 9:31 AM

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3 (Call to order of the Court.)

4 THE CLERK: The matter of PG&E Corporation.

5 THE COURT: Before we turn to the calendar, let me add
6 a couple housekeeping matters for you. And we're going to
7 change -- in the next day or two, whenever I get to it, my
8 staff and I, we're going to make a change to the case
9 management order in one specific matter. And that is, as those
10 of you from out of the area know, the Northern District has had
11 a procedure in forever that oppositions to motions from relief
12 of stay are not required prior to the hearing. And some of you
13 who -- in particular debtors' counsel, committees' counsel --
14 know that in recent times, I ask for at least a preliminary
15 statement of opposition on a couple of motions.

16 So I'm going to issue a change to the case management
17 order that will apply to the debtors and the two official
18 committees, not to anyone else, and ask that if you have a
19 motion -- if you have an opposition to a motion for relief from
20 stay, you file a response five days prior.

21 Now, it will be treated like a preliminary hearing,
22 and whether I act on it or not remains to be seen. And for
23 anyone else, I'm just going to leave the rule in effect. Most
24 of the motions for relief from stay are the debtors'
25 responsibility, in any event. But it's just with the calendars

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1 being as busy as they and the crowds that they are, I simply
2 need more time to be able to anticipate oppositions.

3 Another thing that's a matter of -- it's not a big
4 deal, but it's important to me to help in doing my job, since
5 we've had the case on file, all of the pleadings have been
6 filed by local counsel, Ms. Kim and Mr. Benvenutti. I'd like
7 to have going forward, from the debtors' side, Mr. Karotkin,
8 that that lawyer principally responsible for the matter that's
9 going to be on the calendar at least have his or her name on
10 the pleading, their signature. I don't -- it can be the usual
11 type of signature.

12 And I'm not trying to discount Ms. Kim or Mr.
13 Benvenutti's role. If you want to leave them on alone, they
14 can make the argument. I just -- the point is when I have a
15 point that I want to make, I like to know who's the author
16 ahead of time. And that cuts both ways. If I want to be mean
17 about it and critical, I'll take it out on the author. And if
18 I want to be complimentary, I want to give props where they
19 belong.

20 So -- and it's not absolute. If attorney A has done
21 the work, but for some other reason attorney B is going to be
22 presenting the argument for any other reason, I'm not going to
23 make a big deal of it. And as I say, this is not a demotion of
24 Ms. Kim or Mr. Benvenutti; they're more than welcome to present
25 arguments. But it's not my place to tell the debtors' counsels

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1 who and what law firm is supposed to be on something. So
2 that's not a big deal, but --

3 MR. KAROTKIN: Can we get some insight first as to
4 whether you're going to be nice or not nice about it before we
5 sign our names?

6 THE COURT: I won't scold you. Remember, I was blamed
7 for scolding you once when I really didn't scold you. You
8 might have felt like the scolded, but I wasn't the scolder. So
9 well, I'll tell you what, Mr. Karotkin: the answer is just
10 always say the right thing.

11 The third thing that I want to make -- this is
12 probably a plea for mercy. Some of you are, no doubt, blessed
13 by staffs of thousands of people helping you. I have two law
14 clerks and two courtroom staff who are right in front of me,
15 and we are it. We are the total team. And on a couple of
16 matters, I have recruited help from the clerks of other judges
17 for specific matters.

18 But one of the things that we're kind of squeezed on
19 in some of these matters is when there are extensions of time
20 as we come up to a hearing. And I don't want to be negative
21 about this. If the committee -- and I think recently the
22 creditors' committee and the U.S. Trustee exchanged
23 stipulations to extend the time to do something, and I don't
24 want to discourage that or sound like I think that's a bad
25 idea. It's actually constructive, particularly if there's a

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1 good result. The one I have in mind, I presume it got resolved
2 because the U.S. Trustee didn't take advantage of the extended
3 time to object and didn't.

4 But I'm simply going to tell you I'll continue to
5 honor those stipulations, but I may just have to pass the
6 matter over to the next calendar or defer it. I'd rather not
7 do that because a lot of you travel, a lot of you prepare, we
8 prepare. But if I'm encouraging you to work things out and I
9 get something twenty-four hours or thirty-six hours before the
10 hearing and it's not something routine, I just don't always
11 have the time for it. We are somewhat busy, you can imagine,
12 and we want to continue to do it that way.

13 The last thing is simply a comment. We have on the
14 calendar -- we had on the calendar today motions for the
15 retention of FTI and Compass. And for those of you who know --
16 that don't know, the parties have stipulated to put that over.

17 So I'm just going to make a comment about it -- two
18 comments. I believe in the tort committee position on that
19 motion there was a statement made consistent with what one of
20 the counsel -- perhaps from the U.S. Trustee's office; I don't
21 remember -- discussed with me at a private hearing about the
22 term "affiliate" and what is the consequences of being an
23 affiliate.

24 And it occurred to me afterwards that it might be
25 helpful to read the statute, and I did read the statute. And

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1 "affiliate" applies to the debtor. And to me, any issue that
2 relates to two entities that are not the debtor, at least the
3 statutory definition of affiliate doesn't seem to apply.

4 Now, is that a big deal? No, it's not a big deal and
5 it's not going to influence my ruling one way or the other.

6 But here's where I want some help on at the next time around,
7 whether it just be thought argument or policy considerations.

8 And that is the following: we have a roomful of lawyers, some
9 of us used to be lawyers, and lawyers are advocates for
10 clients. And so therefore, the conflict rules are pretty clear
11 about representing an adverse interest. We know it, we live
12 it, we deal with it in the Bankruptcy Code and in our
13 professional lives.

14 But when I apply that to something like a professional
15 organization hired to make an analysis of fire damage claims,
16 or damage claims, or things of those nature, I start to wonder
17 whether it really is adversarial. And so what that makes me
18 think about -- and I don't want to turn this into a debate
19 today; I just want it to be on people's minds -- is, well, if
20 FTI is providing analysis or Compass is providing analysis, are
21 they adversaries? Are they adverse to one another? If the
22 purpose of the exercise is to get to the truth, rather than be
23 what an advocate has to do -- I'm not suggesting that advocates
24 ignore the truth, but sometimes they emphasize different
25 things -- I don't know how adversarial it is.

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1 And I think about this case, and comments were made
2 yesterday in the discovery dispute that at some point down the
3 road there may be a more expansive analysis -- and it might
4 involve the Court, might involve the parties -- certainly would
5 involve the parties -- on the subject of claims estimation.
6 And I start to think, well, would I have one set of experts on
7 one side of the courtroom saying the damages are X and another
8 set of experts on the other side saying the damages are Y? And
9 I don't imagine that that's what ought to be happening. And if
10 that is what the parties think is going to happen, then that's
11 fine. But think about what we're talking about.

12 We had been told from the outset that this is a
13 solvent estate, and if that's not the case, then some other
14 consequences may follow. But if there's going to be a
15 consensual -- or not a consensual -- if there's going to be a
16 plan that leaves the estate solvent, then isn't the issue not
17 to compete on different allocations or different amounts of
18 damages? Because the issue to me is who are the claimants.

19 And I think if there are -- and we know there are
20 countless real claimants in this case, but there might be some
21 not real claimants. And that would be an issue, for example,
22 if there's a claim that should be defeated not because of the
23 nature of the injury suffered by the victim, but rather that
24 the person isn't even a victim at all, that's a different
25 issue. But that's much broader, I mean, a more specific

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1 question in terms of the inquiry.

2 So I'm going to end this observation by simply saying
3 that as I think about, on the one hand Compass, on the other
4 hand FTI, whether they continue to serve their clients as their
5 particular clients want them or whether I have to sustain an
6 objection by the U.S. Trustee or the tort committee or anyone,
7 that's not the point. The point is what is the purpose of the
8 Court when it's time to look at these big questions? Are these
9 experts more like truth-seekers, or advisors to the Court, or
10 are they more like advocates?

11 I don't think they're more like advocates in this case
12 because I -- again, if one side says, well, the damages are X
13 billion dollars and the other side says well, the damages are X
14 plus billion dollars, therefore what? If the ultimate result
15 is the creditors are going to be paid, then it shouldn't make a
16 difference.

17 So I'll leave it at that, and I don't want any debate
18 today. When you are preparing for the next time around, if
19 there's no resolution of the FTI-Compass engagement
20 consensually, I'd like at least, let's say, five days before
21 the hearing that the committee, the tort committee, the
22 creditors' committee, the debtor, and the U.S. Trustee's
23 certainly welcome to weigh in on this. I'm not inviting
24 everyone to weigh in on it, but I'd like some help on how that
25 should influence my thinking, not only on the particulars of

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1 the engagement of one or the other of those two professionals,
2 but on just the conduct of what is the purpose of this kind of
3 an analysis that has to be made?

4 So with that, I will conclude. And Mr. Karotkin, I
5 believe you said you wanted to start with the relief from stay
6 matters today, right? So are we sticking with that?

7 Oh, Ms. Kim? You signed the pleadings, I guess you
8 can speak.

9 MS. KIM: Thank you. For the record, Jane Kim, Keller
10 & Benvenuti, on behalf of the debtors. Your Honor, because
11 of, as you mentioned, the Compass and FTI retention
12 applications late -- got pushed off, continued, to the next
13 hearing --

14 THE COURT: Right.

15 MS. KIM: -- all of the remaining retention
16 applications, there are six of them --

17 THE COURT: Uh-huh.

18 MS. KIM: -- are unopposed. And so we kind of figured
19 that we'd shuffle it around a little bit since the relief from
20 stay and the TURN ratepayer committee motion are both --

21 THE COURT: Contested.

22 MS. KIM: -- contested. So we would maybe try to --

23 THE COURT: So you want me to do the retention?

24 MS. KIM: I think yes.

25 THE COURT: Okay.

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1 MS. KIM: But actually, before we do that if I could
2 just make one logistical comment to --

3 THE COURT: Sure.

4 MS. KIM: -- the housekeeping issues that you
5 identified? Happy to not be the lawyer who's signing the
6 pleadings. Under the local rules, in order to e-file with a
7 digital signature for lawyers who are not ECF-registered in
8 this court, we're supposed to get scanned copies of their
9 physical signatures, which as you probably can imagine gets a
10 little bit cumbersome with the amount of papers that are
11 involved.

12 THE COURT: Well, but it doesn't have to be for every
13 pleading. I mean, if -- let's use Mr. Karotkin as an example.
14 If he's going to be signing the next fifteen things, I mean,
15 I'm not going to make an issue if -- I mean, if you --

16 MS. KIM: So it's okay --

17 THE COURT: He's been admitted as a pro hac vice.

18 MS. KIM: Pro hac, yes.

19 THE COURT: And you are, as his cocounsel, are
20 representing that you are aware of, or you have -- there is --
21 we can attribute this to you and your cocounsel -- are in
22 control, then, of the original. I'm not going to question
23 that.

24 MS. KIM: Okay.

25 THE COURT: Okay? But the issue really is nothing

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1 more. I like -- and with the volume of pleadings such, I'm not
2 making a list of who split the infinitive and who said the
3 wrong thing; I just want to have the face that I'm having the
4 conversation with. Because you know who you're talking to.

5 MS. KIM: Yep. I'm happy to not be on every single
6 one of these pleadings, so thank you, Your Honor. So --

7 THE COURT: Well, no. You can let Mr. Benvenutti take
8 the tough one.

9 MS. KIM: You know, I think he would be fine not being
10 the lawyer signing all the pleadings either.

11 So there are, as I mentioned, six retention apps --

12 THE COURT: Uh-huh.

13 MS. KIM: -- applications that are still on the
14 agenda. There are two for the debtor, filed by the debtors,
15 two filed by the unsecured creditors' committee, and two filed
16 by the tort claimants' committee.

17 THE COURT: Yeah, I just had a couple questions for
18 all of them; I have no issues.

19 MS. KIM: Sure. So I don't know if you want to take
20 them all at once, or for the debtors --

21 THE COURT: I can go right through the list if you
22 don't mind. I'll just go --

23 MS. KIM: That is fine with me.

24 THE COURT: One other comment. I'm not sure -- I'll
25 let you and Mr. Karotkin decide the sequence when we get past

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the retention. We have CCSF, Valero, Gelman, and TURN.

MS. KIM: The ratepayer, yes.

THE COURT: When we come to TURN, I'm going to make some loose time allocations and suggest that for TURN and its counsel, no more than about thirty minutes with some time to reserve, and other people who are joining TURN can add on to whatever Mr. Harris makes by way of his opening comment. And similarly from the other side, from the debtor, the U.S. Trustee, and the committee, I'd like to just say divide up the thirty minutes.

I've read the briefs. You well know that I know the issue. And so no one's going to be prejudiced by not having three hours to make the argument. So I'll leave to your side to pick the sequence of the four.

I'll go down the list. On Centerview, Centerview was carried over. Does the U.S. -- Ms. Villacorta is the U.S. Trustee satisfied with the disclosures that were made by Centerview?

MS. VILLACORTA: Okay. So good morning, Your Honor. Marta Villacorta on behalf of the United States Trustee. So just for the record, we have had discussions with Centerview, and Centerview has narrowed its list of confidential clients. And the remaining clients on the confidential list appear to be clients that, if disclosed, might affect the client's business as well as people may wonder why did they retain Centerview?

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1 We also conducted a public search to confirm that
2 these entities are, in fact, confidential. And I've discussed
3 with Mr. Newman that it is generally important to be careful to
4 make sure that the confidential list is as narrow as possible.

5 THE COURT: And believe it is.

6 MS. VILLACORTA: Yeah. So we've been working with
7 Centerview on this, and we appreciate their cooperation.

8 THE COURT: So do you withdraw the objection? I mean,
9 you're satisfied I should sign the order?

10 MS. VILLACORTA: I'm satisfied. Yeah.

11 THE COURT: Okay.

12 MS. VILLACORTA: Just one thing that I'd like to note
13 for the record. So we actually received a revised proposed
14 order this morning, and I'd like the opportunity to review it
15 and consult with my client. So --

16 THE COURT: The only other comment that I have is -- I
17 think this is was carryover that I raised, the question about
18 not having the indemnity for negligence. I assume that that
19 was acceptable to Centerview, right? Mr. Newman?

20 MR. NEWMAN: Yes, Your Honor.

21 THE COURT: Yeah, okay.

22 MR. NEWMAN: That was actually the reason for the
23 revised proposed order. We've included language to address
24 that, Your Honor.

25 THE COURT: Then, in that case, I will --

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1 MR. NEWMAN: I have a copy of it with a redline if
2 you'd like to see it.

3 THE COURT: That's okay. I don't want to take time
4 with that. I will approve it subject to the U.S. Trustee
5 signing off on the form of order. And then you just upload the
6 order with the U.S. Trustee's sign-off on it, and I'll sign the
7 order.

8 MR. NEWMAN: Will do.

9 THE COURT: Okay.

10 MR. NEWMAN: Thank you. I should mention for the
11 record, I just got an email moments before I came up here from
12 the tort committee who had a question about whether the
13 language that we'd included was acceptable. So I would just --
14 just in an abundance of caution, you should include the tort
15 committee's --

16 THE COURT: Sure.

17 MR. NEWMAN: -- sign-off to make sure that --

18 THE COURT: Sure.

19 MR. NEWMAN: -- language is acceptable to them.

20 THE COURT: That's fine. No problem.

21 MR. NEWMAN: Thank you.

22 THE COURT: Okay, got that out of the way.

23 Lincoln Partners, I'll take Lincoln Partners and DSI
24 together. And I simply want to note -- and this goes to my
25 comment about knowing who the author is -- Ms. Dumas' the

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1 author of the late filing, and I want to give her credit and
2 her client credit. I thought that, on her behalf and on behalf
3 of DSI and Lincoln, the response and the submission was very
4 informative in terms of the methodology that the committee and
5 the committee's chair went through to make the decision. I
6 found it very helpful and appreciate the diligence with which
7 they went about that, and I have no problems approving the two
8 new applications for DSI and Lincoln, with that observation.

9 MS. DUMAS: Thank you, Your Honor.

10 THE COURT: So do you want to say anything? You don't
11 need to say anything.

12 MS. DUMAS: No, no, no. I will, I will to give credit
13 where credit's due. Since Your Honor thought it was a helpful
14 brief, Mr. Rose was the author.

15 THE COURT: How come your name is on it?

16 MS. DUMAS: I was simply the signatory.

17 THE COURT: In that case --

18 MS. DUMAS: Had you not liked it, sir --

19 THE COURT: -- there was a split infinitive that I'll
20 overlook.

21 Next is I'll take Groom. I don't know if anyone's
22 here or on the phone from Groom. I have just one slight
23 problem with the Groom application. The application makes
24 reference to an engagement letter, but in fact the application
25 attaches what I assume is a PG&E standard form for employment

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1 of counsel. It has all the usual rules that I'm used to seeing
2 in those. And if there is a separate rule of engagement, I
3 need a declaration from Mr. Levine that sets that forth. If
4 there isn't one, he can say there isn't one.

5 And then the only other comment is, again, not
6 something I want to get bogged down on except that the Groom
7 Law Group is a specialist in the other end of the country, and
8 they aren't familiar with the practice here, but the statement
9 was made on page 3 of the Groom application that -- let me find
10 the statement that I was focusing on. It was made -- which I
11 would expect from any large law firm or other professional:
12 "The debtors, however, have numerous relationships and
13 creditors. Consequently, although every reasonable effort has
14 been made to discover and eliminate the possibility of any
15 conflicts, including the efforts outline in paragraphs 11 and
16 12, Groom is unable to state with certainty" -- et cetera, et
17 cetera. Well, paragraph 11 and 12 don't tell me much.

18 So I want to get -- I will tentatively approve the
19 Groom application, but I want a supplemental declaration from
20 Mr. Levine that at least explains a little bit more about what
21 did he mean when he said that.

22 He also, in one other comment, there's a statement
23 made in the Groom application that -- except as disclosed in
24 the application the payments that have been made, the pre-
25 petition payments have been made to his law firm, and there's

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1 nothing that explains that.

2 So again, I don't suggest that if there were payments
3 that were made before bankruptcy that that is a disqualifier,
4 nor do I assume that Mr. Levine actually is going to file a
5 declaration saying that he has a horrible conflict. So but I
6 want the record to be such that it clarifies. So for my
7 purposes, I will treat this as tentatively granted, and I'll
8 look forward to a supplemental declaration from Mr. Levine
9 regarding the points that I made. I don't need further comment
10 about that.

11 Next is Axiom. I'm going to assume that --well, the
12 debtor and the debtors' counsel haven't said a word, so the
13 debtor doesn't object to a fair amount of money being paid per
14 month to Axiom and the services it's going to render to the
15 estate. And so therefore, I'm not going to second-guess that.
16 This might -- I don't know whether the tort committee is going
17 to be making a similar request, and I'm not going to worry
18 about that for now.

19 The only other comment is I believe the Axiom
20 application still has the same kind of problem that I asked to
21 be excluded from some of the other law firms' applications I
22 have already approved: that is I don't want to have it in the
23 finding -- or excuse me, in the order a finding as to no
24 adverse interest and disinterested. I just want the
25 representations that are made that are consistent with it.

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1 That's all.

2 So you're about to respond? You don't have to say
3 anything.

4 MR. BRAY: I'll say nothing then. Thank you.

5 THE COURT: Okay. So I'll -- okay.

6 The final one I have is Simpson Thacher. Again, I
7 compliment the U.S. Trustee for bird-dogging this one. It's an
8 unusual application because I can't recall an application that
9 gets bifurcated into coming in under two different rules. But
10 I understand the procedure and understand why it came to be.
11 And Ms. Villacorta, I compliment you and your office for
12 staying on top of this and --

13 MS. VILLACORTA: Thank you.

14 THE COURT: -- bird-dogging it. And I will approve
15 that without any discussion.

16 All right. So --

17 MR. ETKIN: Your Honor?

18 THE COURT: Yes, on the phone?

19 MR. ETKIN: Your Honor, sorry to interrupt. This is
20 Michael Etkin on the phone --

21 THE COURT: Yes, sir.

22 MR. ETKIN: -- on behalf of the Public Employees
23 Retirement Association of New Mexico.

24 THE COURT: Yes, sir.

25 MR. ETKIN: We filed a reservation of rights, and I

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1 just didn't want that to be sitting in limbo. I think it's
2 reflected in the agenda.

3 THE COURT: Yes, it is. I didn't --

4 MR. ETKIN: Our --

5 THE COURT: I didn't comment because I regard it as a
6 reservation of rights. But go ahead, say what you wish.

7 MR. ETKIN: Yeah. We actually -- I apologize. Can I
8 be heard for just thirty seconds, Your Honor?

9 THE COURT: Yes, sir.

10 MR. ETKIN: Our primary concern in filing the
11 pleading, Your Honor, was the original motion was a little
12 unclear as to where directors and officers liability insurance
13 was going to kick in. And we are obviously very concerned
14 about that.

15 Just by way of quick background, we're the lead
16 plaintiff in pending securities litigation involving the
17 debtors.

18 We see by the changes that this is now going to --
19 these applications are going to be teed up through the interim
20 compensation order. And again, thanks to the U.S. Trustee for
21 that; that was a concern. And there's also new language in
22 there regarding a reservation of rights with respect to the D&O
23 insurance. So I don't think the D&O insurance is implicated by
24 this application at all, and that'll have to be done
25 separately.

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1 So those changes actually dealt with the concerns that
2 we raised in our reservation of rights. And I just wanted to
3 make sure I put that on the record.

4 THE COURT: Okay, Mr. Etkin. That's fine. And you
5 can reserve rights, and the other side is reserving rights, and
6 everything's fine. We're good to go. And if there's a problem
7 down the road you've reserved your rights.

8 I don't mean to imply that everybody in the case has
9 to reserve their rights, but at least you've made it clear in
10 terms of this motion, so we'll leave it at that.

11 So Mr. --

12 MR. ETKIN: Thank you, Your Honor.

13 THE COURT: So is there anyone in court or on the
14 phone that wants to be heard on any of the retention
15 applications that are being dealt with today or that are on the
16 calendar for today? Okay.

17 Mr. Karotkin, we're back to you. What's your pleasure
18 on the action items?

19 What sequence do you want to do?

20 MR. KAROTKIN: Your Honor, I think the CCSF, the stay
21 motion, and Mr. Tsekerides from my office is on the phone to
22 handle that.

23 MR. TSEKERIDES: Good morning, Your Honor. Ted
24 Tsekerides from Weil, Gotshal for the debtors.

25 THE COURT: Good morning. I guess it's good afternoon

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1 your time, Mr. Tsekerides. Or are you on --

2 MR. TSEKERIDES: It is, but I think it --

3 THE COURT: Or are you in China or somewhere? You
4 were somewhere else before, right?

5 MR. TSEKERIDES: I was in Japan, but I'm back.

6 THE COURT: Mr. Tredinnick, good morning.

7 MR. TREDINNICK: Good morning, Your Honor. Edward
8 Tredinnick of Greene Radovsky Maloney Share & Hennigh on behalf
9 of the City and County of San Francisco. And also in the
10 courtroom is Ms. Theresa Mueller and Suzy Hong of the city
11 attorney's office --

12 THE COURT: Good morning.

13 MR. TREDINNICK: -- who head up the city's energy
14 team.

15 THE COURT: So a question I had for you is the defense
16 or the opposition says that this is really all about money on
17 the third -- the final one, the most recent proceeding that
18 that city started, and that everything else is all rolled up in
19 the existing QF litigation. Is that -- do you agree with that?

20 MR. TREDINNICK: No, Your Honor. The QF, the
21 quarterly filing proceedings are specific proceedings relating
22 to specific applications that have taken place where the PG&E
23 is required, under a separate provision of the Federal Power
24 Act, to file these quarterly filings where there has been a
25 service agreement that has been put in place for a specific

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1 application.

2 The city has a very short period of time to protest
3 those. There are approximately four that are still pending,
4 and about three of those -- and three of those have to do with
5 the primary, secondary issue, that is also part of the
6 complaint that has been filed.

7 The complaint is a more broad --

8 THE COURT: The more recent one, the one you've just
9 filed, just before the petition.

10 MR. TREDINNICK: The one that was just filed.

11 THE COURT: Yeah, I can't keep track of these numbers.

12 MR. TREDINNICK: Yeah, I'm sorry, Your Honor. The
13 2019 complaint.

14 THE COURT: Right, right.

15 MR. TREDINNICK: The 2019 complaint deals directly
16 with all of the other applications that the city has been
17 attempting to get service from but has unable to get an
18 appropriate service from PG&E. And so that is approximately
19 thirty or more applications that are detailed in Ms. Hale's
20 (phonetic) declaration and including, on a going forward basis,
21 was getting some resolution on this primary, secondary issue,
22 and the proper application of the wholesale --

23 THE COURT: That's not a -- I mean, that's not a
24 measure of damages. That's a measure --

25 MR. TREDINNICK: No.

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1 THE COURT: That's a determination of whether the
2 utility owes the city this lower level, whatever you call it,
3 second tier.

4 MR. TREDINNICK: If I might make just a statement on
5 the issue of these damages, these are not really damages. They
6 are a request for a refund --

7 THE COURT: Well --

8 MR. TREDINNICK: -- based on --

9 THE COURT: -- some people would --

10 MR. TREDINNICK: Well, it's a money --

11 THE COURT: -- consider that damage.

12 MR. TREDINNICK: Yeah, it's a --

13 THE COURT: Well, let's put it this way: if there's
14 no bankruptcy and you win, what do you get? Do you get a
15 check? A credit?

16 MR. TREDINNICK: A credit.

17 THE COURT: Well, but you get the dollar equivalent,
18 right? I mean, you do get a money recovery, even if it's just
19 a credit.

20 MR. TREDINNICK: If FERC makes the determination that
21 PG&E has improperly administered the wholesale distribution
22 tariff --

23 THE COURT: Uh-huh.

24 MR. TREDINNICK: -- there could be a determination
25 that the cost that the city had to incur because of that

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1 application could be refunded back to them.

2 THE COURT: Right.

3 MR. TREDINNICK: That is a dollar --

4 THE COURT: Okay.

5 MR. TREDINNICK: We concede that that is a dollar
6 issue.

7 THE COURT: Okay. But do you concede that if that
8 happens, you're back here to determine --

9 MR. TREDINNICK: Absolutely.

10 THE COURT: -- whether you can recover it. I mean,
11 you --

12 MR. TREDINNICK: There's no question about that.

13 THE COURT: So --

14 MR. TREDINNICK: And the city has no issue with that.

15 THE COURT: Much like any other kind of claim for
16 money. If I've got you right, and Mr. Tsekerides might take a
17 different view, but your position is that you have asserted
18 rights for the city -- a whole bundle of rights, but the one
19 that we're focusing on for the 2019 is that Utility did
20 something improper or incorrect, and that if FERC agrees, the
21 recovery including -- including various remedies, is a monetary
22 recovery of some sort. Right?

23 MR. TREDINNICK: Right.

24 THE COURT: Okay. And if we get to that point, then
25 you're back in line.

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1 MR. TREDINNICK: We'll file a claim for that amount.

2 THE COURT: Okay. Maybe you'll have a claim, maybe
3 you're entitled to offset. You'll maybe do something, but the
4 automatic stay will apply.

5 Well then, do you concede then, at least on this
6 issue, that the company's right, that this is governed by the
7 stay? This is not a 362(b)(4) exception?

8 MR. TREDINNICK: The enforcement of any recovery --

9 THE COURT: How about the determination of it? I
10 mean, this -- you're doing --

11 MR. TREDINNICK: I believe that the determination --

12 THE COURT: The city is doing it for itself; it's
13 doing it for its own fiscal outcome, right?

14 MR. TREDINNICK: I don't believe that the
15 determination should be stayed. I believe that the enforcement
16 of any determination should be stayed.

17 THE COURT: No, no. But what I'm asking you is a
18 different question. Your motion says determine that there's no
19 stay, or if there is stay, give me a relief from stay. I'm
20 hearing from the utility, at least, that there is a stay. This
21 isn't a police power exception. This is an attempt by the city
22 to recover an economic recovery for its own account, and
23 therefore the stay applies. And they want me to leave the stay
24 in effect; you want me to vacate the stay. I'm just asking if
25 you agree to that analysis.

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1 If you go home with a winner today, you're a winner,
2 right?

3 MR. TREDINNICK: Um-hum.

4 THE COURT: But if I agree that the stay applies but
5 grant relief from stay up to the point of any recovery, that's
6 really what you want to do. I mean, you don't care how you get
7 there.

8 MR. TREDINNICK: I don't -- no, I don't.

9 THE COURT: Well, you see --

10 MR. TREDINNICK: Well, I believe that there's a reason
11 to have a determination that the stay does not apply --

12 THE COURT: Why is that?

13 MR. TREDINNICK: -- to these types of proceedings.

14 THE COURT: Well, why do you think it's important? If
15 I just say there is no stay, but if there is it's modified, why
16 isn't that sufficient?

17 MR. TREDINNICK: For these --

18 THE COURT: So when your cocounsel goes before the
19 FERC commissioners and the hearing examiners and all the people
20 you have to go through the drill, nobody says, wait a minute;
21 doesn't the bankruptcy court have something to say about
22 letting us go forward with this? I mean --

23 MR. TREDINNICK: I agree. For our purposes, how we
24 get there is not a particularly --

25 THE COURT: Well, I'm not trying to trap you. I'm

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1 trying to -- I mean, look. The parties are familiar with this
2 case law. And again, one of the decisions that's cited was my
3 decision that was ultimately affirmed by the Court of Appeals.
4 But then this Dingley case, the way the Dingley case came out,
5 the debtor's counsel believed that Dingley has -- that both of
6 these tests have to be satisfied.

7 I'm of the view that I don't have to decide that if I
8 grant you relief from stay and you can see that that's good
9 enough. Now, if you want me to -- if I have to make the
10 decision there is no stay, then I have to make the second
11 inquiry, and -- you follow me?

12 MR. TREDINNICK: Yes.

13 THE COURT: Okay. And so I'm really -- so if I -- I'm
14 trying to put it a different way. Do I need to make the
15 decision, if I'm persuaded that if there is a stay you should
16 get relief, at least up to the point of recovery?

17 MR. TREDINNICK: I don't think that's -- I don't think
18 you necessarily need to make that decision.

19 THE COURT: Well, one of the things that was confusing
20 about this -- again, this is a rather subtle issue for us
21 bankruptcy people -- is the United States FERC, through
22 counsel, they argue that the 362(b)(4) operates or lets FERC
23 proceed, and you are arguing and the debtor argues, no, the
24 analysis here is who's governed by it or exempted from it, and
25 it's the city.

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1 The city, if the stay applies -- I mean, let me put it
2 this way. If the city's trying to recover a monetary recovery
3 for its own account, the debtors' argument is there is a stay,
4 and FERC's argument that FERC is exempt from the stay is
5 irrelevant. You have to measure it from the point of view of
6 the city, not from the point of view of FERC. Did you not pick
7 that up in their papers?

8 MR. TREDINNICK: But I disa -- I don't know whose
9 papers you're talking about now.

10 THE COURT: Well, both.

11 MR. TREDINNICK: Okay.

12 THE COURT: Well, let's try it a different way. Is
13 FERC stayed if it needs to proceed in responding or dealing
14 with this application?

15 MR. TREDINNICK: Which application are we talking
16 about now?

17 THE COURT: 2019.

18 MR. TREDINNICK: The 2019?

19 THE COURT: Um-hum.

20 MR. TREDINNICK: The debtor has taken a position that
21 they're stayed. They filed a notice --

22 THE COURT: You're stayed, right? You're stayed from
23 prosecuting.

24 MR. TREDINNICK: Well, I think that's --

25 THE COURT: Well, I tell you what.

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1 MR. TREDINNICK: We're splitting hairs a little bit
2 about it.

3 THE COURT: Mr. Tredinnick, let me --

4 MR. TREDINNICK: I don't believe that --

5 THE COURT: Let me see -- let Mr. Tsekerides, when
6 it's his turn, he can tell me if this is something that we
7 should even be worried about. We don't need to take
8 everybody's time to get into a philosophical debate about
9 whether 362(b)(4) applies from FERC towards the debtor with
10 CCSF as a litigant or applies to CCSF as the litigant seeking
11 recovery from a tribunal, called FERC, against Utility. It's
12 semantics, to some extent, I think anyway. Go ahead and add
13 anything more you want to add.

14 MR. TREDINNICK: Well, I mean, I believe that the
15 regulatory agency is FERC.

16 THE COURT: Correct.

17 MR. TREDINNICK: And that is the governmental unit
18 that we're talking about when we're talking about 362(b)(4)
19 because they're the ones that's doing the regulation. And this
20 is --

21 THE COURT: Well, but that's my point. I think the
22 debtors' position says, no, you're the governmental until. And
23 the city is not enforcing its police power in this proceeding;
24 it's enforcing its own entitlement to monetary recovery.

25 MR. TREDINNICK: But in this instance, the city, which

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1 is a governmental unit --

2 THE COURT: Right.

3 MR. TREDINNICK: -- is acting as the eligible customer
4 under the wholesale distribution tariff. It would be no
5 different if it was a private entity that is coming to FERC and
6 saying, please PG&E is not doing right; help us out.

7 THE COURT: So for a private entity, there would never
8 be -- the 362(b)(4) would not come in to play. The fact that
9 FERC is a federal agency is -- so is the bankruptcy court, so
10 is the superior court, so is any other adjudicative body,
11 right?

12 You're the plaintiff, or your client is the plaintiff,
13 and the Utility is the respondent.

14 MR. TREDINNICK: Well, I don't think this situation is
15 much different than the other Ninth Circuit cases, Berg and
16 Dingley, where you had private litigants, there was sanctions
17 given, and the court ruled that these were not stayed because
18 it was -- the entity that was doing that was the court, the
19 federal agency.

20 THE COURT: This is like an old class reunion. Berg
21 was my case.

22 MR. TREDINNICK: That's your case.

23 THE COURT: All right. Do you want to reserve some
24 time?

25 MR. TREDINNICK: Sure.

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1 THE COURT: Does -- Mr. Huang, are you here? Do you
2 want to be heard? Because I'm not sure whether FERC really has
3 a dog in this fight, but --

4 MR. HUANG: Your Honor --

5 THE COURT: -- you did file a very helpful brief, and
6 so why don't you go ahead and tell me what you think I should
7 be doing.

8 MR. HUANG: Yes. Shane Huang for the Federal Energy
9 Regulatory Commission. From FERC's point of view, this is not
10 just semantics; it has real consequences for how FERC is going
11 to move forward. FERC is very conscious of what's going on in
12 this bankruptcy proceeding, and --

13 THE COURT: Well, wow, didn't I know that?

14 MR. HUANG: -- FERC doesn't want to violate the
15 automatic stay. FERC does care how you get there, to use your
16 phrase from earlier.

17 The City and County of San Francisco is a complaining
18 party in the proceeding that PG&E says is stayed. But we would
19 take the same position even if it were a private entity, a
20 private customer of PG&E. And it's because these proceedings,
21 we think, don't resemble that of private parties complaining to
22 a neutral -- in a neutral forum.

23 THE COURT: But isn't CCSF a party that's saying,
24 wait, I'm paying too much because the utility's charging me
25 this amount when I'm entitled to be charged this lower amount?

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1 And they're asking FERC to rule in their favor.

2 MR. HUANG: I think the nature of the dispute in the
3 January complaint, from January 2019 complaint, is not exactly
4 that the debtor is charging CCSF too much money. It's the
5 debtor is attaching certain terms and conditions as a condition
6 of receiving service, and there's a dispute about whether this
7 is primary or secondary service.

8 Without getting in to the merits of who's right and
9 who's wrong, there's a declaratory component to that that's at
10 the very center of that dispute.

11 THE COURT: Right.

12 MR. HUANG: And --

13 THE COURT: And you're saying that even if CCSF, if we
14 substituted it in place of private company that is a customer,
15 wholesale customer, it would be the same analysis?

16 MR. HUANG: Yes, Your Honor. And we would have to
17 split the -- the San Francisco v. PG&E case that we cited from
18 the Ninth Circuit talks about splitting the claims and
19 analyzing the 362(b)(4) analysis on a claim-by-claim basis.

20 THE COURT: Right.

21 MR. HUANG: So the declaratory portion of that
22 complaint is, I think, pretty clearly falls within the police
23 and regulatory exception.

24 THE COURT: Well, I think that was -- again, that was
25 the ruling that I made in the first PG&E case, right?

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1 MR. HUANG: Right.

2 THE COURT: The Ninth Circuit case, right.

3 MR. HUANG: Right, Your Honor. And to the extent that
4 the refund should be -- the request for refund, that portion of
5 the relief should be analyzed separately, we would still argue
6 that it falls within the police and regulatory exception in the
7 same way that the litigation misconduct sanctions in Dingley
8 and Berg were still public policy.

9 THE COURT: But is that because FERC is exercising its
10 regulatory function to make the ruling that CCSF is seeking?

11 MR. HUANG: Yes, Your Honor. You know, they -- we
12 were talking about -- I don't know which FERC proceedings we're
13 talking about. If we're isolating it purely to the Section
14 206 --

15 THE COURT: Well, the motion -- the attention seems to
16 be on the 2019 one.

17 MR. HUANG: Sure.

18 THE COURT: I understand -- you understand much better
19 than I do the interplay of all these things, but the action
20 seems to be on the 2019 one, so.

21 MR. HUANG: Yes. And we would just -- we take the
22 position that they're all covered by the police and regulatory
23 exception. But if we're going to focus on only the 2019, we
24 would ask that you split that into the two separate claims:
25 the request for relief, a declaratory component regarding the

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secondary and primary service, and the request for refunds,
that backward-looking relief calculating the refund.

We think that that's pretty similar to the proceedings
in Dingley where the court ordered sanctions in a monetary
amount.

THE COURT: Right.

MR. HUANG: And then the debtor didn't pay, and the
court issued a show cause order. And that proceeding was held
to be part of the police and regulatory exception because --

THE COURT: But Dingley resembles Berg in that sense.
They both -- Berg was a lawyer, Dingley was not, but they -- in
both cases the debtors were, in effect, defying a judicial
order of some kind, right?

MR. HUANG: Right.

THE COURT: Yeah. But well, why does it matter to you
and to FERC if, at the end of the day, I issue an order that
says if there's a stay, it's modified, or it's granted? I
mean, there is -- it's vacated. What difference does it make
to you --

MR. HUANG: Well, Your Honor --

THE COURT: -- both as a legal matter and as practical
matter?

MR. HUANG: -- FERC has a large number of different
types of regulatory proceedings.

THE COURT: Right.

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1 MR. HUANG: And some of them take the form of -- for
2 example, a lot of section 205 proceedings that I believe the
3 debtor is not disputing that the police and regulatory
4 exception applies -- are those where the debtor is essentially
5 a party that files these quarterly filings or files a rate or a
6 modification to a rate and submits it to FERC for approval.
7 And then anybody else who's affected by that may file a protest
8 or --

9 THE COURT: So there, the utility is more like a
10 plaintiff. More like. It's not a plaintiff, but it's the one
11 that come to the tribunal asking for --

12 MR. HUANG: Right.

13 THE COURT: -- something.

14 MR. HUANG: And Your Honor, I'd say it runs the entire
15 spectrum from -- FERC has a hotline that effected people can
16 call and complain. It's much more informal than the filing of
17 a complaint in, for example, a district court.

18 And Section 206, that really is the furthest along the
19 spectrum of proceedings that resemble a plaintiff coming in.
20 And we would still not characterize it in that way because we
21 think it resembles the NLRB decisions that are discussed in
22 Continental Hagen which we cited where a private party may
23 submit a complaint, but the agency, the regulatory authority
24 ends up acting on that complaint in its own name and issuing
25 orders for the benefit of the public, for the benefit of third

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1 parties, and in pursuit of its regulatory mission.

2 MR. HUANG: So to bring it back to your question,
3 what does it matter to FERC? FERC wants to be able to know,
4 with clear lines drawn, to say this is not to say we don't have
5 to go to the bankruptcy court and ask permission.

6 PG&E, as you might imagine, is party to a number of
7 FERC proceedings and so rather than going to the bankruptcy
8 court and asking for either relief for a stay or a
9 clarification on whether the stay applies, we would like to
10 know in advance so that when FERC makes a decision, it doesn't
11 have to run that risk of violating the automatic stay and its
12 action.

13 THE COURT: But suppose at the end of the day FERC's
14 decision is favorable to CCSF. Is it expressed in terms of --
15 forget declarative relief, I got that. But is it also
16 expressed in terms of an entitlement to money recovered, either
17 a refund or a payment?

18 MR. HUANG: If CCSF prevails on --

19 THE COURT: Yeah.

20 MR. HUANG: -- this. Yes, FERC could calculate the
21 amount of a refund by it, but --

22 THE COURT: So -- so again, I understand this is where
23 you live your life, but if I -- the next case on our docket
24 today, or one of them, is a request to have a matter go forward
25 for an injury to a plaintiff in the Superior Court. And if I

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1 grant that relief, that plaintiff, I think, understands that
2 it's trying -- she or her counsel is trying to get the claim
3 liquidated, but then after that, if that court says plaintiff
4 is entitled to X dollars, then that party is governed by the
5 stay in terms of what to do about that recovery; isn't -- that
6 has to happen here, too, don't you think?

7 MR. HUANG: Your Honor, I think Continental Hagen is a
8 good case of drawing that line between the entry of something
9 that resembles a money judgment and the enforcement of that so-
10 called money.

11 THE COURT: Okay, but don't you see, if you want me to
12 give you a green light to say there's no stay, I have to at the
13 same time say, but there really is one if you rule in favor of
14 CCSF. So I mean, I'm willing if I -- if debtor's counsel
15 doesn't persuade me otherwise and I go with what Mr. Tredinnick
16 is asking for, consistent with what you seem to be agreeing.

17 I still have to make sure it's clear what Mr.
18 Tredinnick concedes. If he gets a money recovery, he doesn't
19 get to go levy on a bank account or offset something that would
20 typically be stayed as a matter of bankruptcy law as an
21 entitlement. So that's just the facts, like my Superior Court
22 example, if the plaintiff in that case wins. So how you
23 want -- how would that get reconciled from FERC's point of
24 view? FERC -- I agree with you. FERC shouldn't have to be
25 coming back here asking permission to do its job.

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1 MR. HUANG: Right.

2 THE COURT: But its job isn't to collect refunds,
3 right -- for customers?

4 MR. HUANG: No, Your Honor.

5 THE COURT: Okay.

6 MR. HUANG: It issues the orders and then --

7 THE COURT: Okay, so again, simplify it. The trial's
8 over. The ALJ is done. The Commission's ruled. It orders
9 that CCSF is entitled to X dollars. That's his order, right?

10 MR. HUANG: Yes, Your Honor.

11 THE COURT: Period. End of story. Then it's up to
12 CCSF to collect its X, right?

13 MR. HUANG: Yes, Your Honor.

14 THE COURT: Correct?

15 MR. HUANG: Yeah.

16 THE COURT: So I can say that -- I can say either that
17 there is no stay to get to that point or that -- which is what
18 you'd like me to do, but then -- this is kind of a bifurcation
19 of the analysis, but by the way, after that, the stay is alive
20 and well, and Mr. Tredinnick acknowledges that and you don't
21 care.

22 MR. HUANG: Yes, Your Honor, we would --

23 THE COURT: You don't care.

24 MR. HUANG: We would draw the line between enforce --
25 entry and enforcement --

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1 THE COURT: Right. Right.

2 MR. HUANG: -- in the same way. And we would advise
3 our client FERC --

4 THE COURT: And you don't care --

5 MR. HUANG: -- on where that line is drawn.

6 THE COURT: -- so when the FERC order is final, and if
7 the FERC order gives the complaining party one dollar or one
8 gazillion dollars, it doesn't matter in terms of the regulatory
9 function. But it does matter as a matter of bankruptcy law and
10 how that party gets his one dollar or his lots of dollars,
11 right?

12 MR. HUANG: Yes, Your Honor.

13 THE COURT: Okay. Okay, well, I guess if I decide to
14 go the way that CCSF wants me to, I'll certainly instruct the
15 parties to make sure you're on board as to the form of the
16 order so we have it clear.

17 So the last thing in the world I want, if I make any
18 ruling here that's favorable to CCSF, is to create confusion
19 for people outside of the bankruptcy world, like your client.

20 Do the counsel for the official committee or the tort
21 committee want to be heard? You both have weighed in on it. I
22 don't know if you want to be heard on the subject?

23 MR. BLOOM: This is Jerry Bloom, Your Honor, on behalf
24 of the Tort Committee, if I could be heard?

25 THE COURT: Okay, go ahead first, then. We had

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1 counsel at the table at the podium --

2 MR. BLOOM: Sure.

3 THE COURT: -- but I'll -- you can go first on the
4 phone.

5 MR. BLOOM: I can't see that, so why don't you let him
6 go and then I'll follow him?

7 THE COURT: No, that's all right. It's Mr. Bloom, you
8 said Bloom?

9 MR. BLOOM: Yes, it is, Your Honor.

10 THE COURT: Yeah, go ahead. Make your statement, Mr.
11 Bloom.

12 MR. BLOOM: Well, following your discussion, Your
13 Honor, I think that the position that you've been saying
14 follows very closely to what we wrote in our response, which is
15 we do not oppose San Francisco's request to permit the
16 proceedings to proceed before FERC to a final determination on
17 the issue of PG&E's compliance with the wholesale distribution
18 tariff.

19 In other words, there is a upfront determination, what
20 is the proper way in the past and going forward for PG&E to
21 comply with the terms and conditions of the tariff that is
22 filed with FERC, and we're not opposed to FERC makes this
23 determination. It has the specific expertise needed to
24 determine what does the tariff say, and here are the actions
25 for PG&E in the past in accordance with that, and how should it

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1 be implemented going forward; and we think that is their
2 determination to be made, so we do not oppose what CCSF has
3 asked for in terms of allowing that to go forward.

4 And in terms of the second question, then, if they
5 make a determination, I would note that the relief that is
6 granted by FERC might be a monetary refund or something, but it
7 could be a number of other different ways in which they
8 craft -- in fact, we have cases where FERC can say going
9 forward this is how we want this done, but in the past for
10 whatever reasons, we don't rule on, but we need a determination
11 so that frankly, what it does by allowing FERC to go forward,
12 if San Francisco is right, going forward there won't be an
13 additional accumulation of damages or possible additional
14 refund.

15 If the debtor is correct here, then there won't be
16 anything owed, and that determination is important to bring
17 clarity as to FERC in the implementation of federal rules and
18 the tariff, which has the enforcement as a law during the
19 pendency of the bankruptcy, so that -- as the cases that were
20 cited in the motions and the responses, that the debtor (break
21 in audio) avoid the consequences of complying with these FERC
22 tariffs during the pendency of the case.

23 That being said, we agree -- and I think this is the
24 way you were framing the question -- that the liquidation of --
25 if there's anything rewarded, which is the second step in that,

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1 if they come back and say, and the City is due X amount of
2 money, that liquidation should not be going -- should not go
3 forward and can't go forward, As you stated correctly, they
4 have to come back to the court, the bankruptcy court. They
5 can't just go and attach a fund or get a refund or get payment.

6 THE COURT: Yeah.

7 MR. BLOOM: And I think -- so I think our position in
8 our response follows very closely to the way you were
9 posturing, which is the part that -- within FERC's specific
10 expertise to make a determination, i.e., how do you comply with
11 the tariff as they've done expressly in the past, how do we
12 comply with the tariff going forward; so we either make a
13 determination of damages or cessation of damages accruing in
14 the future is something FERC should be doing. If -- but we
15 oppose, or we said that we ask that San Francisco not be
16 allowed to -- from liquidating the claims as we go forward, or
17 estimating the claims for seeking payment. That definitely has
18 to come back to the Court.

19 THE COURT: Okay, I think that counsel for the City
20 conceded that issue, so that's fine. I appreciate your
21 comments, Mr. Bloom.

22 MR. BLOOM: Thank you.

23 THE COURT: All right, let's hear from the committee;
24 well, state your appearance for the record?

25 MR. BRAY: Good morning, Your Honor. Gregory Bray,

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1 Milbank, LLP, counsel for the committee.

2 THE COURT: Mr. Bray, in looking at your submission --

3

4 MR. BRAY: Yes, sir.

5 THE COURT: You seem to say that you defer to the
6 debtor on whether they should be liquidating -- litigating at
7 this point, but you want -- you don't want a ruling with
8 respect to claims for damages. You're still wedded to that?

9 MR. BRAY: Well, Your Honor, let me just say it this
10 way. We think that any -- the issue of the allowability,
11 validity, priority, amount of the damages, really should be
12 determined by this Court. This is a big case, lots of claims.
13 We think there is --

14 THE COURT: Expertise, special tribunal?

15 MR. BRAY: Yes, I understand that.

16 THE COURT: You really want me to -- you want me to
17 calculate FERC?

18 MR. BRAY: No, no. I'm not asking you to calculate.
19 I think what I -- we think there should be a uniform
20 application of damages or claims against the estate, and that's
21 the responsibility and the jurisdiction of this court.

22 We're not saying FERC can't arrive at a number. I
23 suspect that it's part of whatever -- if you lift the stay at
24 all, that as a part of that analysis, it's inevitable. What we
25 are saying is that that number shouldn't be etched in stone.

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1 They have to file a proof of claim if someone wants to
2 challenge the calculation of the damages, the validity.

3 THE COURT: Where would they challenge?

4 MR. BRAY: They would challenge it here, Your Honor,
5 as an objection to the claim.

6 THE COURT: Well, I understand that your committee and
7 the other committee, for the reasons we discussed yesterday,
8 want to have some sort of a systematic approach to claim
9 staking, but stay tuned to the next case. We have a personal
10 injury claim and there are questions about where they can even
11 be determined.

12 I mean, how could I possibly take away from FERC its
13 function of making these very, very complicated determinations?
14 You heard Mr. Huang and Mr. Tredinnick, both I think are on the
15 same page, that if FERC reaches a point where it says the
16 utilities -- I mean, the City is entitled to X dollars, that's
17 where we stop and that's where the stay kicks in.

18 There may be bankruptcy defenses, but I don't know how
19 I would go back and second-guess that amount. It's almost like
20 res judicata.

21 MR. BRAY: Well, that's the slippery slope we're
22 concerned about here. I don't know that the committee --
23 obviously, it's your decision -- would agree it's res judicata.

24 THE COURT: Well --

25 MR. BRAY: -- and I'm not saying --

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1 THE COURT: -- maybe not in a legal sense.

2 MR. BRAY: -- that you would agree or you're going to
3 say I'm going to revisit the entire FERC analysis and
4 substitute my judgment for them; that's not my point. I
5 just -- we're going to have a lot of these types of issues come
6 before the Court in all sorts of capacities, and it's pretty
7 clear to us that FERC is going to take a very expansive view of
8 their interpretation of their jurisdiction, so we're --

9 THE COURT: Well, why do you think that, though, in
10 this case? In other words, what we just heard from FERC's own
11 lawyer saying -- and I think you and I both know from other
12 experiences, they are a specialized tribunal. I might disagree
13 or you might disagree with how far they extend their reach in
14 certain respects, but when it comes time to make a decision
15 like this one, they are the only place to do it, it seems to
16 me.

17 And just like if a personal injury claimant is
18 entitled to a jury trial, that's a different question that will
19 come somewhere else, or the bankruptcy court does have the
20 ability to defer, to abstain, to grant relief from stay to go
21 to other places, so why would this be different?

22 Let me try it a different way, I'll rephrase my
23 question. PG&E is in bankruptcy for principal reasons we know,
24 and we also know there are other reasons that are going to be
25 dealt with in this bankruptcy that maybe wouldn't have been but

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1 for the fires that pushed them into bankruptcy.

2 But -- I don't know what involvement you had in PG&E
3 1, but I kept a lot of things going just the way they were out
4 in the real non bankruptcy world. Like thousands of -- well,
5 maybe not thousands, but dozens and dozens of claims in other
6 forms. Why shouldn't I follow that procedure here,
7 particularly for something like this?

8 MR. BRAY: We're not necessarily saying you should. I
9 think it's a case-by-case decision.

10 THE COURT: Okay.

11 MR. BRAY: And our concern first is -- was what we
12 considered to be a broad and inappropriate assertion that
13 (b)(4) applies; we don't think it does. This is not within the
14 police power exception. Thus my comment about the broad
15 interpretation of the jurisdiction.

16 THE COURT: Um-hum.

17 MR. HUANG: That's more of our concern, is that we not
18 be led down that path and then to an argument that basically
19 anything that has to do with FERC in any capacity, or any other
20 regulator, is now subject to (b)(4). Our focus, as was the
21 Court's I think, is on who's the plaintiff, who's asking for
22 the relief, who's doing what to whom here.

23 THE COURT: Well, I don't know. I don't remember.
24 I've been reading so much that I perhaps overstated the case,
25 but there seemed to be in the competing briefs from debtor and

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1 from FERC particularly, about where are we supposed to apply
2 the 362(b)(4), and clearly, if a governmental agency goes and
3 enforces an environmental law, for example, there's no
4 question.

5 MR. BRAY: Agreed.

6 THE COURT: If it goes and recovers or seeks to
7 recover a loan that the SBA guaranteed, for example, that's
8 clearly not police power. This seems to be kind of a little of
9 each.

10 MR. BRAY: It's fuzzy, I agree.

11 THE COURT: It's a push.

12 MR. BRAY: I had to read this several times to try and
13 understand what was going on, and I'm not one hundred percent
14 sure that I do still. Having said that, it's very clear to us
15 that there is a damages component, a monetary component.

16 THE COURT: Me too.

17 MR. BRAY: And that's the part that caused us concern
18 and the assertion that that aspect of it was subject or part of
19 or the exception of (b)(4). We disagree with that. We don't
20 think that it is. That's the comment I made about the slippery
21 slope and looking at this on a case-by-case basis. You may
22 well determine -- and the committee does not -- we said in our
23 pleadings, we're not disputing an -- I'll call it the
24 underlying regulatory dispute --

25 THE COURT: Right, right.

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1 MR. BRAY: That this isn't -- that FERC has
2 jurisdiction over this, and we weren't asking the Court to step
3 in the middle of that.

4 THE COURT: No, I understand.

5 MR. BRAY: Yeah.

6 THE COURT: And again, Mr. Tsekerides is going to --
7 he's been very quiet. If he were here, he might have wanted to
8 say something. He's on the phone and he can't say anything
9 yet.

10 But the last paragraph that you filed, Mr. Bray, or
11 your colleague, Mr. Kreller's, name is on it, so I assume he
12 wrote it -- I'm not complimenting or criticizing -- it says --

13 MR. BRAY: If he's on the phone, he has to answer
14 this.

15 THE COURT: It says, "Such ruling should continue to
16 be stayed because the bankruptcy court, not FERC, is the proper
17 form for determining validity, priority, or amount."

18 Well, priority I'm not a problem with. Validity, I'm
19 not sure what that means. I suppose if there was some
20 provision of the Bankruptcy Code that got implicated, obviously
21 that's still there. But amount of damages seems like I can't
22 do that, so -- we don't have to debate it to death here.

23 MR. BRAY: I think -- well, I understand your point.
24 And I'll -- let me contract our statement a little bit. We
25 just want to be sure that this court has the ultimate say over

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1 the assertion of the claim against the estate, how it fits in.

2 THE COURT: Um-hum.

3 MR. BRAY: If the Court is saying, I'm not going to
4 re-litigate the issue of the amount because I'm satisfied that
5 as a result of the FERC process, that was a proper exercise or
6 it was a proper determination, then the committee understands
7 that. We just don't want the Court to end up being foreclosed
8 from visiting an issue on this that needs to be visited at the
9 time it arises; that's our concern.

10 THE COURT: Okay. All right. Anyone else want to be
11 heard other than the debtor's counsel? All right.

12 Mr. Tsekerides, are you still there?

13 MR. TSEKERIDES: I am, Your Honor.

14 THE COURT: All right.

15 MR. TSEKERIDES: I've been listening very carefully.

16 THE COURT: You're up. Did you sign the brief?

17 MR. TSEKERIDES: So -- I didn't, but I will going
18 forward on all things FERC.

19 So I think, from the debtor's perspective -- and again
20 for the record, Ted Tsekerides for the debtors from Weil,
21 Gotshal. We have a complaint filed by a litigant who is
22 looking for a declaration of right and damages, and claiming
23 that there is an exception under (b)(4). And so I just want to
24 say at the outset, to the extent the Court is going to get into
25 a (b)(4) analysis, we would request the ability to submit

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1 further briefing.

2 The brief that we submitted, I wouldn't even call a
3 brief. It was a preliminary response. That (b)(4) issue, as I
4 think everyone has touched on, is very important to the debtor.
5 We don't -- we believe that very few if any cases would fall
6 under (b)(4), and we don't think this one does. If the Court
7 wants to take that issue on, we would request further briefing,
8 but I do hear Your Honor going in a different direction, so let
9 me just lay out for you what our thinking was.

10 One was that (b)(4) did not apply. And then two, if
11 the stay applies, we still argue that you should not lift it
12 because -- and we broke it up into the QF proceeding, which was
13 shorthand for us for the quarterly filings, and the complaint
14 proceeding, which is what people have been referring to as
15 2019.

16 Now, we could submit declarations if it would be
17 helpful, but it is absolutely our understanding -- and I think
18 you heard some of that today, that -- at least in part, that QF
19 proceeding will be touching on the primary versus secondary
20 issue. And once that issue is decided, once FERC makes that
21 ruling, and there was a conference today -- I did some follow-
22 up. There is going to be a hearing on those consolidated QF
23 proceedings on January 22nd of 2020. And it's our
24 understanding that's a faster road than whatever this complaint
25 proceeding is. But in any event --

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1 THE COURT: What -- what -- excuse me. When -- that
2 hearing when, in January, you say?

3 MR. TSEKERIDES: January, yes.

4 THE COURT: That's --

5 MR. TSEKERIDES: As in next year.

6 THE COURT: Next January? That's nine months from now
7 or seven months from now. Okay.

8 MR. TSEKERIDES: Well, I will tell you, the complaint
9 proceeding is not going to go any faster than that, Your Honor.
10 The one that they filed.

11 THE COURT: Yeah, okay.

12 MR. TSEKERIDES: Our point is that the primary versus
13 secondary service issue will be addressed, and so our argument
14 as to why the stay applies but should not be lifted is because
15 it will be dealt with in the QF proceeding, and there's no
16 reason for the debtor to have to deal with two proceedings.
17 And if we win, if the debtor wins and it was appropriate to
18 treat the City of San Francisco as a utility -- I'm not going
19 to get into the merits, but that's basically what they are.

20 If we were allowed to treat them as a utility in how
21 we provide the service to them and the debtor wins, they their
22 complaint proceeding is moot. If we were to lose that, then
23 the application of that would be applicable to the complaint
24 proceeding. So why go forward with this other one and waste
25 resources in that particular --

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1 THE COURT: What if the ALJ chooses to consolidate
2 them in some fashion, which I presume is an option? Isn't that
3 an option to --

4 MR. TSEKERIDES: You're talking about the complaint?

5 THE COURT: Well, yeah. I mean --

6 MR. TSEKERIDES: The complaint proceeding --

7 THE COURT: Yes. I mean, I don't -- again, don't have
8 the knowledge to understand the different proceedings, but I
9 know if it were a bankruptcy, I could take two different claims
10 objections and one adversary proceeding and one main case
11 motion and consolidate them all and hear them all together.
12 Why isn't that something that could be done by the hearing
13 officer or the ALJ at FERC?

14 MR. TSEKERIDES: I don't know the answer to that. The
15 only thing I can say, though, is that the QF proceedings are
16 ready to go. The complaint proceeding would be starting from
17 scratch, so I don't know what impact that would be if -- if you
18 had a case ready to go to trial and somebody added a case that
19 hadn't even had discovery yet, what the impact would be, but
20 I'm in the deep end now on that, but --

21 THE COURT: Okay, so --

22 MR. TSEKERIDES: I think --

23 THE COURT: -- so let me --

24 MR. TSEKERIDES: -- I don't know --

25 THE COURT: Okay --

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1 MR. TSEKERIDES: -- if it could do that.

2 THE COURT: But what if San Francisco had not filed
3 the 2019 proceeding; would the QF proceedings be impacted by
4 the automatic stay?

5 MR. TSEKERIDES: We have not sought to stop those
6 other proceedings because -- so the answer, the short answer,
7 is no, because we started them --

8 THE COURT: Well --

9 MR. TSEKERIDES: -- pre-petition --

10 THE COURT: -- maybe that's why you haven't --

11 MR. TSEKERIDES: -- quarterly --

12 THE COURT: -- tried to stop them, because you started
13 them.

14 MR. TSEKERIDES: Exactly.

15 THE COURT: That seems to me to answer the question,
16 right?

17 MR. TSEKERIDES: Right. And also -- I mean I do want
18 to -- some potshots were taken at the debtor that we're trying
19 to use the bankruptcy proceeding as a way of getting out of our
20 regulatory obligations, which is simply not true. If we have
21 quarterly filings we have to make, we will. And if FERC, in
22 response to that, asks us to do something, we will.

23 But again, I think you heard Mr. Huang speak to this
24 that -- what we don't want to have happen, and certainly not on
25 the current briefing -- we'd want to brief more -- is some kind

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1 of ruling that (b)(4) applies to anything FERC puts its fingers
2 on, and that's something we can't abide without further
3 briefing. But again, I don't know that you need to go there,
4 Judge, to rule on this matter.

5 Our point is, the stay applies but it shouldn't be
6 lifted because we think judicial economy is best served by
7 letting the QF proceeding go forward on the primary/secondary
8 resolution such as it may be, and then if there needs to be
9 further proceedings for damages, we agree with you, Judge. We
10 don't think you should be the one. Frankly, I don't know that
11 you could be the one that makes the decision on whether, or
12 what the amount of damages would be, but again, at that point
13 we'd have rulings.

14 This happens every day in bankruptcy cases where maybe
15 the debtor would reach a resolution with the City where it
16 wouldn't need to have a proceeding go forward. So those are
17 the reasons that we put forth as to why the stay, which we
18 believe applies, should not be lifted.

19 THE COURT: Okay, but look, you said a couple times
20 you want to do further briefing on the 362(b)(4) question, and
21 I've been asked by Mr. Tredinnick for the City to -- well, I
22 could just grant relief from the stay.

23 So the question is -- and Mr. Huang obviously is
24 concerned about any confusion and, I think, quite properly is
25 trying to draw a distinction, but the question today is what

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1 goes forward and what's stopped. If I just don't cross the
2 bridge, the 362(b)(4) bridge, and say if there's a stay, I
3 grant relief from stay and things go forward, recognizing that
4 the City's own lawyer conceded that if and when there's a
5 determination of a monetary liability, the stay then is
6 applicable, and FERC is not put off by that either.

7 So why should --

8 MR. TSEKERIDES: No, and Your Honor --

9 THE COURT: Why shouldn't I do that? In other words,
10 you told me that if the sequence is QF is going to be done in a
11 nice fast track like next January -- God knows when the damage
12 calculations might be done -- why not let this thing start to
13 go forward; what's the harm to Utility to treat this piece of
14 the litigation like it would have gone had there been no
15 bankruptcy?

16 MR. TSEKERIDES: Well, and again, just to put a fine
17 point on it, the reason I mention the further briefings are,
18 Judge -- and I think I've mentioned this a few times -- is only
19 if you decided to rule on (b)(4). If you decide not to do
20 that, then obviously, we don't need the further briefing.

21 But let me ask -- answer your question why not now.
22 And I think why not now, the answer to that is because we have
23 this QF proceeding. If the debtor wins on the QF proceeding,
24 there will never be a damages calculation.

25 THE COURT: Yeah, but I have to think that there's a

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1 judge in Washington, D.C. called an ALJ, and he or she knows
2 how to manage the dockets, and you don't start trying the
3 second phase of the case if the first case is dispositive.

4 And so if we use this as a analogue in a civil action,
5 if I had a lawsuit pending before me and I was told that it's
6 going to be all sorts of stuff until next January when
7 liability will be determined, and after that we're going to
8 have a three-day or a three-week or a three-month trial on the
9 calculation of damages, I probably would say okay, let's start
10 with liability first.

11 And why isn't that the same analysis that should be
12 done here? Why should --

13 MR. TSEKERIDES: Well --

14 THE COURT: -- FERC or the ALJ determine PG&E's
15 damages -- or CCSF's damages until it determines whether it's
16 liable in the first place?

17 MR. TSEKERIDES: Well, the answer is, Your Honor, that
18 unlike a case that might just be in civil court, you're the
19 bankruptcy judge that the debtor is asking you to help it avoid
20 having to spend resources that it doesn't think it should have
21 to spend.

22 So you're controlling cases that go forward against
23 the debtor, and we're asking the Court, don't lift the stay
24 because if you do, now we're at the whims of this other judge
25 who may or may not look at it the way -- they're not going to

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1 be focused on whether or not they're preserving the debtor's
2 estate. They're going to be focusing on whatever they focus
3 on.

4 You're the only judge who is focused on the debtor's
5 estate and preserving its assets. And what we're saying is, it
6 doesn't make sense to us to have to go through that and hope
7 that maybe we can convince this FERC judge not to make us spend
8 resources that we shouldn't. That's why we're asking you in
9 the first instance not to lift the stay, and saying what's the
10 harm to the other side?

11 Look, if we win, they don't get damages. If they win,
12 it's not going to be that hard to figure out where we go from
13 there.

14 THE COURT: Is there a way to get a consent? Can a
15 party such as CCSF consent to a sequencing so that the damage
16 issue is deferred until the liability is determined, much like
17 you could stipulate in a civil case?

18 MR. TSEKERIDES: I don't know the answer from a FERC
19 perspective, but it would seem logical to me that two parties
20 fighting about something would be able to work things out. But
21 that's just sort of my off the cuff, what seems practical --

22 THE COURT: Mr. Tredinnick --

23 MR. TSEKERIDES: -- but I couldn't tell you if that's
24 allowed.

25 THE COURT: Mr. Tredinnick, can you or your co-counsel

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1 answer that simple question? Where'd you go, did he leave?
2 There you are. Do you -- is there a simple answer that the
3 parties can just agree to a sequencing of the way the
4 proceeding goes forward. And your co-counsel can answer it if
5 it's easier; that's fine with me.

6 And let me just get your name for the record. You
7 were introduced before, but on the record here.

8 MS. MUELLER: Your Honor, Theresa Mueller, deputy city
9 attorney for San Francisco.

10 THE COURT: All right, Ms. Mueller, so is there a way
11 to do it like real people do in the real world?

12 MS. MUELLER: Sure, yeah. Those kinds of
13 considerations apply in FERC cases just like they do everywhere
14 else. So there will be some kind of sequencing of the cases.
15 The parties can agree and recommend certain things. The ALJ
16 doesn't have to accept them, but typically they do.

17 THE COURT: If you say to the ALJ we'd like to try
18 this case in reverse, we'd like to do the damage trial first
19 before we go to liability, they'll say, that sounds good to me?

20 MS. MUELLER: I'm not sure they would say that.

21 THE COURT: I don't think so.

22 MS. MUELLER: And I don't think we would propose that
23 either.

24 MR. TSEKERIDES: I don't think we would agree to that
25 either, yeah.

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1 THE COURT: Say again, Mr. Tsekerides?

2 MR. TSEKERIDES: I don't know that we'd agree to a
3 reverse bifurcation, Judge, but --

4 THE COURT: I wouldn't either. Okay --

5 MR. TSEKERIDES: Yeah.

6 THE COURT: -- so Ms. Mueller, the point is, it's
7 obviously up to the judge. But at some point -- and would you
8 agree that it's a sensible approach and you would explore that
9 with the debtor's counsel if this goes forward?

10 MS. MUELLER: We would be happy to explore something
11 like that with them. I mean, the thing that I think is
12 problematic about their position is -- look, the QF case and
13 the complaint case are not the same. The complaint case is
14 much bigger. It covers more issues and more facilities, and
15 the QF case does not.

16 THE COURT: Right.

17 MS. MUELLER: So it's not clear that the QF case will
18 resolve liability.

19 THE COURT: Well, but if you get an adverse ruling in
20 the QF case, that undoubtedly narrows your entitlement in
21 what's left, right? By definition.

22 MS. MUELLER: It would, yes.

23 THE COURT: Yeah.

24 MS. MUELLER: And the other thing that I would just
25 note, part of why the City is concerned about any delay to

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1 moving forward is that new facilities are being delayed every
2 single day, so the list is growing. And that's the harm that
3 we're more --

4 THE COURT: So then -- well, your potential damage
5 claim is increasing, right? If the City is entitled to a
6 recovery, the number's going up, right?

7 MS. MUELLER: That is true, but this is one of those
8 cases where just getting the money later doesn't really
9 recompense the delay for facilities getting electricity.

10 THE COURT: No, I understand. I understand.

11 Okay. Anyone else?

12 MR. TREDINNICK: Unless Your Honor has any further
13 questions --

14 THE COURT: No.

15 MR. TREDINNICK: -- I don't think we have anything to
16 add.

17 THE COURT: Now I'm going to go ahead and let this go
18 forward. I'm satisfied that -- and I don't think that it's
19 blank and white where I can draw a line down the middle of this
20 case and say this is all 362(b)(4) on the left and this is
21 enforcement on the right -- I mean, monetary enforcement.

22 And again, I was the trial judge in PG&E 1 on the
23 matter that's quoted involving the City of San Francisco and
24 PG&E, but a different issue. And the Ninth Circuit left my
25 decision in place for the most part, but it's not that simple

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1 to break it into compartments. And to me -- although I am not
2 going to pretend that the company is only in bankruptcy to fix
3 and deal with the wildfire claims; it's dealing with all of its
4 issues, and indeed, there may be all kinds of litigation coming
5 down the road in other areas, so I'm not going to just have the
6 view that everything else is automatically up for grabs.

7 And so Mr. Bray's statement about taking it on a case-
8 by-case basis is probably good advice at this point; it's still
9 early in the case. But to me, hearing the stakes are high for
10 the City and the utility, PG&E, is culpable -- I mean, if
11 culpable, then it's going to have to pay the piper anyway, and
12 so the better thing to do is to keep the matter moving forward.

13 So I think taking the advice from Mr. Huang and Mr.
14 Tredinnick, I'm prepared to say that I will -- whatever stay
15 applies, I will modify so that CCSF can pursue all of its
16 remedies as identified in the papers. Whether it be what we
17 call the QF, which interestingly enough, those of you that were
18 in the first bankruptcy we had, QF meant something else then,
19 and it was a big litigation item in those days, but also the
20 2019 proceeding; but up to the point when, as you heard Mr.
21 Huang say, if and when FERC rules that the City is entitled to
22 a monetary recovery, that's where FERC's concerns should end
23 and the City's rights are governed by bankruptcy principles or
24 whatever might exist.

25 Who knows, maybe there'll be a confirmed plan then,

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1 maybe there'll be something else, and Mr. Tredinnick, the
2 ball's going to be in your court with Ms. Mueller to work with
3 Mr. Huang and Mr. Tsekerides to come up with an order that --
4 in my view, and again, many of you who know me know this is
5 important to me. I believe our court must give clear signals
6 to other courts, and I have been in many cases where I'm
7 worried that a state court judge maybe not understand the
8 ramifications of ruling one way or the other.

9 So my order has to make it clear what is fair game and
10 in a sense, in layperson's sense, fair game for FERC and its
11 ALJ and the commission and everybody else, to bring this
12 dispute to a point where either the Utility -- I mean CCSF is
13 entitled to nothing, in which case -- or nothing by way of a
14 monetary recovery, and that's one outcome. And if they're
15 entitled to a monetary recovery in some way, whether it be
16 offset, refund, future whatever, that that be protected by the
17 bankruptcy stay and this Court's jurisdiction.

18 So I presume you can come up with a form of order that
19 does that.

20 MR. TREDINNICK: Yes, Your Honor, just one point of
21 clarification. You stated that the matters that were detailed
22 in our pleadings -- there was one other matter that was not,
23 that was detailed in the pleadings but was not discussed today,
24 and that's the 2014 complaint that's been pending with FERC --

25 THE COURT: Well --

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1 MR. TREDINNICK: -- for some period of time --

2 THE COURT: -- but it's still pending --

3 MR. TREDINNICK: -- and that will be -- yeah.

4 THE COURT: Yeah.

5 MR. TREDINNICK: But that would be included within
6 this order.

7 THE COURT: Yes.

8 MR. TREDINNICK: Okay.

9 THE COURT: I mean --

10 MR. TSEKERIDES: Well -- and well, Your Honor -- I
11 mean, hold on a second. I mean --

12 THE COURT: Okay.

13 MR. TSEKERIDES: They had filed a complaint that we
14 tried to stay. And I think we have to be mindful of what we're
15 dealing with. We had a target to shoot at and that's only the
16 complaint proceeding. I don't think they should try to use
17 this and we'll deal with it when we get a draft as an
18 opportunity to start throwing in whatever they can think of.

19 THE COURT: Well, let me take --

20 MR. TSEKERIDES: I mean --

21 THE COURT: Let me look --

22 MR. TSEKERIDES: There's a specific --

23 THE COURT: Let me look -- take a second and look at
24 the original motion.

25 Mr. Tredinnick, where would I -- where's that

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1 referenced in the motion?

2 MR. TREDINNICK: Well, I would have to grab the
3 motion, Your Honor. But this was detailed. This was detailed
4 in --

5 THE COURT: Well, right in paragraph -- on page 3,
6 it's the 2014 complaint --

7 MR. TREDINNICK: That's right.

8 THE COURT: -- and related disputes regarding the WDT
9 service. That's what you're talking about.

10 MR. TREDINNICK: That's exactly what I'm talking
11 about, Your Honor.

12 MR. TSEKERIDES: And my point, Your Honor, is that
13 they've moved to lift the stay for a complaint proceeding to go
14 forward. That's -- whatever's in the complaint is what we
15 should be dealing with --

16 THE COURT: Mr. --

17 MR. TSEKERIDES: And whatever we move to --

18 THE COURT: No, you're overstating it. They moved for
19 a ruling that the stay doesn't apply it, but if it does, to
20 grant relief from stay. So I tried to avoid --

21 MR. TSEKERIDES: But we'll see what's in the order,
22 and Your Honor, I do want to make one observation. We
23 understood and what -- we'll take this going forward that the
24 responses that we sent in in advance were preliminary, and I
25 appreciate you're going to rule the way you're going to rule.

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1 But I think going forward, then, it's going to require
2 the debtors to put in more -- we would have put in a twenty-
3 page brief too with perhaps some declarations on these issues.
4 So I think going forward, so there's no surprises, given that
5 you ruled today, we're going to need then to file more fulsome
6 pleadings the five days beforehand.

7 THE COURT: Well, you can do that, but keep in mind
8 that we didn't even -- I can grant relief when I believe
9 there's a basis to, with no written opposition, and all I'm
10 trying to do in my request that there be written opposition is
11 just so I can be prepared. And I'm not going to say it can't
12 be twenty pages; two pages or twenty pages, I need to be
13 informed of the issue.

14 And the motion -- I can't grant more than the motion
15 asks for. The motion asks for relief to go forward and either
16 say that 362(b)(4) is inapplicable, or if it is applicable,
17 that it's modified, so I'm granting it.

18 So again, we'll deal with it the next time around. If
19 you feel you need to file a longer brief, do it. But what I'm
20 not going to do is waste my time with a final hearing.
21 Remember, preliminary hearing, final hearing -- those are the
22 terms for relief from stay, and if I determine that relief from
23 stay is proper on a -- if I had a preliminary hearing, that's
24 the end of it.

25 So look --

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1 MR. TSEKERIDES: Okay, well, we'll be guided
2 accordingly.

3 THE COURT: This is as they say in the Marines, this
4 isn't a hill to die for. Save your next --

5 MR. TSEKERIDES: No, no, I agree. I agree.

6 THE COURT: Okay.

7 MR. TREDINNICK: Thank you, Your Honor.

8 THE COURT: All right, thank you.

9 Mr. Karotkin, I'm sorry. Do you want me to take a
10 break or should we go to the next one. I mean, these are
11 taking longer than I thought.

12 MR. KAROTKIN: Could we take five minutes?

13 THE COURT: Yeah, okay. Well, let's take about ten,
14 just because of the number of people here --

15 MR. KAROTKIN: Okay.

16 THE COURT: -- and people take a personal convenience
17 break, so a ten-minute break for everyone. On the phones,
18 we'll keep the phone open.

19 (Recess from 10:53 a.m. to 11:06 a.m.)

20 THE CLERK: All rise.

21 THE COURT: Mr. Karotkin, I think I garbled your name
22 when I left. I apologize for misstating your name. All right,
23 who's the candidate next up by your determinations?

24 MS. TRAN: Good morning, Your Honor. Hong-An Tran with
25 Weil, Gotshal on behalf of the debtors. I think next on the

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calendar is the Gelman distinguishment.

THE COURT: Okay, I'll take the Gelman case. Do we
have counsel here on Gelman?

MR. WESSEL: Yes, Your Honor, I'll be up there in a
moment.

THE COURT: Okay. Morning.

MR. WESSEL: Good morning, Your Honor.

THE COURT: If you're more comfortable arguing from
counsel table, that's fine. There's a microphone there. You
don't need to stay if --

MR. WESSEL: Well, I can handle standing.

THE COURT: Well, I mean, I want you to be comfortable
and all you need to do is be near a microphone.

MR. WESSEL: So I'm equally uncomfortable sitting or
standing these days.

THE COURT: Well, do we have any other choices?

UNIDENTIFIED SPEAKER: Lying down, which is what I was
doing this morning, but then I had to get up and travel up here
for the hearing.

THE COURT: I need your name for the record.

MR. WESSEL: David Wessel on behalf of the moving
parties, the Gelmans.

THE COURT: All right, Mr. Wessel, do you want to make
any argument? And I'm familiar with the background, so I mean,
just focus on --

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1 MR. WESSEL: Well, (phonetic) Your Honor, it seems
2 clear from the Plummout (ph.) and I'm probably butchering the
3 name, the Plummout and Landmark Fences cases that a showing of
4 a pending action with multiple defendants is in fact a showing
5 of cause for lifting the stay, a prima facie showing.

6 At that point, the burden shifts to the debtors to
7 show prejudice to the bankruptcy proceeding. So the Gelmans
8 have made a showing of a pending action, an action that was
9 pending for two years before the filing of the bankruptcy
10 action.

11 THE COURT: You heard -- were you here for the earlier
12 hearing?

13 MR. WESSEL: Yes.

14 THE COURT: Were you -- did you happen to hear the
15 counsel for the creditor's committee making a pitch about
16 treating the creditors sort of collectively? I mean, the FERC
17 matter that I just spent time with is very specialized, but
18 some of his questions and comments were probably equally
19 applicable to someone in your client's position like lots of
20 other people that have suffered torts. Your client's sort of
21 on a faster track or a more advanced track, but not compared to
22 some. So what should I do about that?

23 MR. WESSEL: Well, the problem is, Your Honor, that
24 the Gelman's case is actually unique, even though that is not a
25 Curtis factor. It's unique because it is more than two years

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1 old and we have two defendants that are not subject to this
2 Court's jurisdiction.

3 THE COURT: So why aren't you going against them? Why
4 didn't you bifurcate and go to trial against the other two?

5 MR. WESSEL: Because those two defendants are
6 contending that PG&E was at fault for our client's --

7 THE COURT: Of course, they always do. But don't you
8 have a prima facie case against those two defendants?

9 MR. WESSEL: Not necessarily, that's what the --

10 THE COURT: Well, they're defendants, so I mean --

11 MR. WESSEL: I understand that.

12 THE COURT: -- you have some --

13 MR. WESSEL: But it's not a prima facie case.

14 THE COURT: Well, maybe prima facie case is the wrong
15 way.

16 MR. WESSEL: A jury has to decide the case, so --

17 THE COURT: No, but what I'm getting at is the trial
18 judge has the ability to drop the case or to bifurcate and try
19 against the two defendants who aren't agreeing, one of whom is
20 CCSF, who is here this morning on another matter.

21 MR. WESSEL: And that raises the risk of inconsistent
22 results, because PG&E will not be a party to that case. So
23 PG&E is contending that they're at fault. They're contending
24 that PG&E is at fault.

25 THE COURT: But you're contending that all three are

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1 liable.

2 MR. WESSEL: We're contending somebody's liable, and
3 they are the ones --

4 THE COURT: All three or only one?

5 MR. WESSEL: Well, we're going to contend that all
6 three are liable --

7 THE COURT: Right, right.

8 MR. WESSEL: -- but it may be that the jury will
9 decide otherwise.

10 THE COURT: Well, no. I understand. But you say
11 there's a risk of inconsistent results -- the point is, and
12 PG&E, of course, is a large company with complex involvements
13 in numerous places, but what if your third defendant was just a
14 small corporation with virtually nothing else going on, you
15 still have -- or if it had gone out of business or if it had
16 gone into Chapter 7, you'd still be able to pursue the remedy
17 against the other two, right?

18 MR. WESSEL: The problem isn't so much pursuing the
19 remedy against the other two, the problem is that when you go
20 to trial, you will have an empty chair there called PG&E.

21 THE COURT: That's right.

22 MR. WESSEL: And they'll be pointing to PG&E in that
23 trial.

24 THE COURT: And what will you be pointing to?

25 MR. WESSEL: Well, we'll try to point to the City and

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1 the --

2 THE COURT: The restaurant --

3 MR. WESSEL: -- restaurant --

4 THE COURT: Restaurant, right.

5 MR. WESSEL: -- Blue Plantain (phonetic) -- but the
6 problem is, of course, that we would want -- we would have
7 wanted to point to PG&E. Now --

8 THE COURT: Well, that's because it's a deeper pocket,
9 but the point is, what if -- that's my point. What if PG&E
10 were not a deep pocket; what if it were just a small company
11 that had virtually no ability to respond anyway? You wouldn't
12 hesitate to let them off the hook.

13 MR. WESSEL: In this situation, Your Honor, there's
14 really no difference in the depth of the pockets. San
15 Francisco has a deep enough pocket, and Blue Plantain has an
16 adequate insurance policy.

17 THE COURT: Then why are you here? I mean, why not --

18 MR. WESSEL: Because PG&E -- because we may end up in
19 the San Francisco Superior Court with a defense verdict for San
20 Francisco and Blue Plantain --

21 THE COURT: Mr. Wessel, there's an automatic stay. If
22 I don't modify the stay, there'll be no verdict one way or the
23 other, up or down, against PG&E.

24 MR. WESSEL: Your Honor, the automatic stay doesn't
25 apply to the City of San Francisco or --

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1 THE COURT: Did you hear what I just said? I said
2 there'd be no judgment against PG&E.

3 MR. WESSEL: I --

4 THE COURT: So trial judges, Superior Court trial
5 judges know how to bifurcate and instruct juries to go find up
6 or down for plaintiff A and B even though plaintiff C is in
7 bankruptcy -- excuse me, defendant, pardon me.

8 MR. WESSEL: So from -- Your Honor, in trying a
9 personal injury case, we have to say somebody's at fault, all
10 right?

11 THE COURT: Um-hum.

12 MR. WESSEL: If we're trying the case against San
13 Francisco and Blue Plantain only, we have to say they're at
14 fault. They could get a defense verdict. Then we'd have to go
15 against PG&E, but because it's a different proceeding, PG&E can
16 point to San Francisco and Blue Plantain, and they could get a
17 defense verdict. They could say Blue Plantain and San
18 Francisco are at fault.

19 THE COURT: Why would they say that? How would --

20 MR. WESSEL: Because they're saying it now.

21 THE COURT: Well -- I'd like to think that you can do
22 a better job of that if you can -- the flip side of that is if
23 the chair is empty and you can convince the jury to award your
24 client a judgment against the restaurant or the City, you've
25 won your case.

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1 MR. WESSEL: Well, I'm --

2 THE COURT: Anyway, another story.

3 MR. WESSEL: I'm pleased --

4 THE COURT: I want to ask you another question.

5 MR. WESSEL: -- to hear that the Court is so confident
6 in my abilities.

7 THE COURT: I don't know you. I'm just looking --
8 look, Mr. Wessel, I have been sitting in this job for a long
9 time and I have lots of relief from stays by plaintiff's
10 lawyers who have other defendants, and I go against the other
11 defendants, and they oftentimes do.

12 Let's switch topics. You mentioned in your mind that
13 the mandatory extension rules are not applicable; why do you
14 say that?

15 MR. WESSEL: Well, because I think the case law that
16 we cited suggested --

17 THE COURT: Well, what case law?

18 MR. WESSEL: -- and I'm not saying, oh --

19 THE COURT: What case law says that mandatory
20 extension is not available here?

21 MR. WESSEL: Your Honor, I think there's a -- I think
22 the statute says that, but if -- and I looked at -- I'd have to
23 look at my papers because I've already resolved it in my mind
24 as not applicable, which is why we're asking for a permissive
25 extension.

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1 THE COURT: Well, you know Ms. Tran's going to ask me
2 not to raise a defense that you didn't raise, but I have to
3 read the law and I'm of the opinion that this case might very
4 well call for mandatory extension.

5 MR. WESSEL: Yeah, I apologize if I --

6 THE COURT: But when you don't ask for it, I'm going
7 to ask you again why you didn't ask for it.

8 MR. WESSEL: I apologize again, but my recollection is
9 that it was clear that it was not applicable in this case.

10 THE COURT: Well --

11 MR. WESSEL: Okay, I think that --

12 THE COURT: Well, you had it. This case might have
13 gone to trial already but for the illness of one of the defense
14 counsel, right?

15 MR. WESSEL: Correct.

16 THE COURT: And so --

17 MR. WESSEL: Well, actually, it would have been -- it
18 would have taken place. You're right. It would have gone to
19 trial already.

20 THE COURT: So -- and therefore, it's an action that
21 was filed before bankruptcy. It involves a matter that should
22 be decided on an expedited -- or not an expedited, but a
23 routine basis with -- the current trial date is when; end of
24 the year?

25 MR. WESSEL: December 16th, Your Honor.

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1 THE COURT: Okay, so -- and if PG&E had not been in
2 bankruptcy, there'd be no basis to bring this -- to have the
3 federal court determine this matter, right?

4 MR. WESSEL: Absolutely.

5 THE COURT: So I mean, it may be extension is
6 technically incorrect in the sense that there is nothing that's
7 pending here from which to abstain, but the point is, relief
8 from stay and extension are very similar.

9 MR. WESSEL: Yes.

10 THE COURT: So okay. Well, let me hear what Ms. Tran
11 has to say, and then I'll come back to you for closing comment.

12 So Ms. Tran, let's mix -- I mean, I understand that
13 mandatory extension and relief from stay, much like remand,
14 they all are kind of -- they all kind of get mixed together,
15 but this is a personal injury case, right?

16 MS. TRAN: That's correct.

17 THE COURT: So it seems to me that I have a choice of
18 granting relief from stay to let this matter get litigated in
19 the Superior Court, or I switch it to the District Court
20 because I can't try this case here, can I?

21 MS. TRAN: So Your Honor, I think first, we believe
22 that the motion should be denied outright because they have
23 failed to meet their initial burden of establishing cause for
24 lifting stay.

25 THE COURT: Really? They've got an injury -- a person

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1 who was injured two years ago would have gone to trial but for
2 illness of counsel. I mean, what else do you want them to say?

3 MS. TRAN: Well, actually the circumstance here are
4 not different than any other tort claims, and with respect to
5 the trial, the motion concedes that the proceeding has not
6 progressed to the point where the parties are prepared for
7 trial. There's still discovery.

8 THE COURT: It was set for trial.

9 MS. TRAN: It was set --

10 THE COURT: And one of the defense counsel was ill,
11 right?

12 MS. TRAN: It has been continued twice, and it's set
13 for trial in December.

14 THE COURT: Was it set earlier except for counsel's
15 illness?

16 MS. TRAN: I believe that's what it says in the
17 motion.

18 THE COURT: DO you have any facts that say that's not
19 true?

20 MS. TRAN: But the fact is now that it's currently
21 scheduled not until December of this year.

22 THE COURT: Right.

23 MS. TRAN: And there's no indication that it would not
24 be continued again.

25 THE COURT: Well, there's no indication either way.

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1 MS. TRAN: That's correct, Your Honor.

2 THE COURT: Okay.

3 MS. TRAN: And so applying the Curtis factors, the
4 Gelmans have not demonstrated cause for relief from stay here,
5 and with respect to your question about your decision on, or
6 whether you can decide cases for personal injury cases, I think
7 that's a question more about timing and sequencing.

8 THE COURT: Really? It's -- am I going to get an
9 Article III appointment in the meantime? I mean, where do I
10 get to decide a personal injury and wrongful death case?

11 MS. TRAN: No, I just mean more that this is an issue
12 or a question that's not -- that you don't necessarily need to
13 decide today, and that given the fact that there is a bar
14 motion that's been filed and that there's a requested bar date,
15 it doesn't -- there's nothing that would prevent you from
16 continuing the hearing on this lift of stay motion until after
17 the date to decide whether or not a lift of stay would make
18 sense there.

19 THE COURT: So I let the bar -- so the bar date comes
20 and then they have to file a claim, and then you'll argue to me
21 that they shouldn't abstain because they filed a proof of
22 claim. So this is kind of a trap, right?

23 MS. TRAN: No, I'm not saying that they have to file a
24 proof of claim; I'm just saying that at the very least, Your
25 Honor should wait until after the bar date to see where we are

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1 in the restructuring process, and where we are with the various
2 claims that are coming in --

3 THE COURT: Okay, in the --

4 MS. TRAN: -- to see if it makes sense at that point.

5 THE COURT: In the opposition, the author wrote --
6 well, maybe Ms. Kim wrote it, I don't know.

7 MR. WESSEL: Ms. Kim's not that clear, Your Honor.

8 THE COURT: "Granting the Gelmans relief from the
9 automatic stay would prejudice the interest of other creditors
10 and interested parties"; is there any basis for that statement,
11 any facts to support that statement?

12 MS. TRAN: Well, I -- first of all, Your Honor, I
13 think that granting relief from stay here would risk opening
14 the floodgates of other -- over a hundred other non-wildfire
15 tort claimants --

16 THE COURT: It might.

17 MS. TRAN: -- to request relief from stay.

18 THE COURT: It might.

19 MS. TRAN: And that in itself is a prejudice to the
20 estate --

21 THE COURT: Do you know what --

22 MS. TRAN: -- in having to deal with --

23 THE COURT: Do you know what happened in PG&E 1 when I
24 had a similar request?

25 MS. TRAN: I think you mentioned earlier that you

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1 allowed all of those claims to go forward.

2 THE COURT: You ever heard of Erin Brockovich? Well,
3 she wasn't here, but people similarly situated, and I can't
4 remember the number, but it was a big number. And guess what,
5 I had to decide back to Superior Court or up to the District
6 Court. Guess where they went?

7 MS. TRAN: I understand that, Your Honor.

8 THE COURT: But I mean, why is that different,
9 seriously? I'm not making light of this, and I appreciate your
10 argument, but the point is, you make some pretty broad
11 statements here that I have to ask you to focus on, and I'm not
12 joking about who wrote it. I don't care who wrote it.

13 The statement is made that granting this motion would
14 force the debtor to devote resources to address the Gelman's
15 claims ahead of thousands of other tort claimants. Well, that
16 may be partially true. But then it says, "and there's a real
17 possibility that dollars spent on defending the Gelman action
18 should be allowed to" -- "should it be allowed to proceed, will
19 diminish the total dollars available to pay in compensation to
20 all claimants." Are you admitting that the debtor is
21 insolvent?

22 MS. TRAN: No, I think what the point of that
23 statement is, is that any sort of resources that need to be
24 devoted to litigating claims like the Gelmans is going to
25 prejudice the estate, and it would prejudice potentially other

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creditors who aren't rushing to the courthouse for relief from
stay.

THE COURT: But how would it prejudice them?

MS. TRAN: I think it's a divesting of resources that
otherwise might be available.

THE COURT: There's outside counsel defending this
case before bankruptcy, right?

MS. TRAN: That's correct, Your Honor.

THE COURT: So they're there, and then if the judge
calls the case to trial, if counsel's ready, if there's some
more discovery -- and there seems like there's been a lot of
discovery already, and I'm not making light of Ms. Gelman's
injury, but it sounds like there's been depositions and
discovery and experts and --

MS. TRAN: And I believe there's still discovery --

THE COURT: What else is there to do?

MS. TRAN: I think there's still discovery remaining,
as the motion states that there are still various depositions
that need to be taken.

THE COURT: Is that your understanding, Mr. Wessel,
there's still -- you can stay -- you can remain seated. Is
there a lot of pre-trial discovery to go forward after all
that's happened?

MR. WESSEL: Principally expert depositions, Your
Honor, because we were about to --

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1 THE COURT: I need you closer to the microphone. Just
2 pull the microphone closer so we'll pick you up.

3 MR. WESSEL: Expert depositions, Your Honor. We were
4 just about at expert disclosure when the counsel for the City
5 notified us of the health problem.

6 THE COURT: Okay. And is that counsel back from their
7 health problems; is the City's counsel back?

8 MR. WESSEL: I don't recall when counsel for the City
9 was supposed to return from the health problem.

10 THE COURT: So if I were to grant relief from stay, it
11 sounds to me like the case still wouldn't necessarily move
12 along because of that, right?

13 MR. WESSEL: I suspect that counsel for the City will
14 be back shortly, and the concept was that we were going to move
15 it along. We picked -- everybody picked the December 16th
16 trial date --

17 THE COURT: Okay.

18 MR. WESSEL: -- so it would move along.

19 THE COURT: Okay. So Ms. Tran, go back to this. I
20 understand. And look, this is the case involving -- the
21 Brockovich-type claims was a large number of claims, and this
22 is one case that has come up on a motion. There have been just
23 a couple, as you know, that are similar that have been dealt
24 with already, but what's going to be different?

25 In other words, I anticipate from statements made

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1 yesterday by counsel, both your co-counsel and for the tort
2 committee, that there may be a broader approach to deal with
3 claims resolution process, but I haven't any clue at all on
4 whether that's going to reach out to individuals who have
5 nothing to do with fires; they suffered their own harm.

6 I'm not saying PG&E's culpable or not, but they might
7 be, and so what's going to be different as far as you are
8 concerned? Because again, if they get relief from stay, it
9 will only be to liquidate the claim.

10 MS. TRAN: Sure, and that's exactly why we asked that.
11 If you're not inclined to deny the motion today, that you
12 should at least continue the hearing so that PG&E and other
13 interested parties can propose an orderly and systematic
14 approach in dealing with these sort of non-wildfire tort claims
15 to the extent that you feel like a mandatory extension might be
16 appropriate here.

17 And to that point, we do cite in our papers the
18 Conejos case which specifically says a finding of mandatory
19 extension does not preclude denial of relief from stay.

20 THE COURT: No, that's true, that's true. But the
21 point is this is one of those things where at least -- it's a
22 personal injury claim, there's no doubt about that. And there
23 may be some courts that believe that the plaintiffs or parties
24 can consent to that. Others might say that it cannot be
25 consented to. And there is a jury right, and that's another

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1 consent issue, so if I assume -- and this is third parties, and
2 so --

3 MS. TRAN: Sure.

4 THE COURT: -- it's a coincidence that one of those
5 parties was -- through counsel has been in court all morning,
6 but that has nothing to do with anything, and so I can't --
7 even if Mr. Wessel said we consent to the jury trial in the
8 bankruptcy court, that wouldn't mean it would happen because
9 two other defendants would be affected --

10 MS. TRAN: Sure.

11 THE COURT: -- and PG&E might not consent, and so it
12 comes down to well, if I don't do it now, what's going to
13 happen differently? And so your suggestion that I wait is
14 tempting, but how long do I wait? What do I know is going to
15 happen?

16 MS. TRAN: And to your point that there are -- and
17 currently there are over a hundred cases that are very similar
18 to the Gelman's --

19 THE COURT: Um-hum.

20 MS. TRAN: -- in that it's a personal injury or injury
21 to property of non-wildfire --

22 THE COURT: Yes, I didn't know the number, but I'm not
23 surprised --

24 MS. TRAN: -- and more than half of those involve co-
25 defendants, and so I think, first, there's nothing that's any

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1 special circumstances about the Gelman's case that should
2 warrant lifting the stay here, and so because there are so many
3 other similarly situated tort claims, we think it would be
4 productive to have time in order to --

5 THE COURT: Come on up, you're getting a helper. Mr.
6 Karotkin?

7 MR. KAROTKIN: Can I say something?

8 THE COURT: Yes, sir.

9 MR. KAROTKIN: I didn't sign the pleading, but I want
10 to say something.

11 THE COURT: No, no, no. I want you to say what you
12 want to say.

13 MR. KAROTKIN: Thank you, Your Honor. Stephen
14 Karotkin, Weil, Gotshal & Manges for the debtors.

15 I think as is typical in other cases when you have
16 situations like this, is typically what would happen,
17 particularly when there are 150 pending cases, is that
18 litigation would not go forward.

19 In the claims process, as Your Honor well knows, if
20 claims are filed -- and I acknowledge that you can't adjudicate
21 these personal injury claims, but as claims are filed, as you
22 well know, in the bankruptcy process, that facilitates a
23 settlement of the claims.

24 THE COURT: It does.

25 MR. KAROTKIN: And that's kind of what we're saying.

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1 THE COURT: And by the way, so does the trial date.

2 MR. KAROTKIN: And so -- I acknowledge that, so does a
3 trial date. But, again, what we're potentially facing here is
4 after -- if you were to grant this motion 150 other people come
5 into court with that litigation pending in 150 state court
6 actions, the insurance coverage, Your Honor, does not cover
7 defense costs, and there's a huge deductible.

8 And, again, as you well know probably better than
9 anybody, once the filing of credit claims process moves forward
10 that facilitates an orderly settlement negotiation with respect
11 to these claims to get them allowed into bankruptcy court at a
12 number to be addressed in the plan without all of the costs
13 associated with the litigation. And that's what we're trying
14 to accomplish here simply.

15 THE COURT: But there is an issue of litigating the --
16 I mean, liquidating the claim.

17 MR. KAROTKIN: And, again, as Ms. Tran indicated,
18 if -- and, again, I think this would be unusual. If we come to
19 the point where we can't resolve those claims in the context of
20 the process before this Court, you can always modify the stay
21 or let it go forward. That's all we're saying.

22 THE COURT: What's the current plan on -- I mean, I
23 know there's a motion in the pipeline to set the bar date, but
24 I haven't focused on it. What's the --

25 MR. KAROTKIN: We have requested that the bar date be

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1 set at September 16th, I believe.

2 THE COURT: September 16th.

3 MR. KAROTKIN: Other parties may have views on that.

4 THE COURT: But whether it's September 16th or some
5 other date in this calendar year, nothing's going to happen
6 quickly in terms of this next phase, there's communication and
7 negotiation and so on. It may be, but it's not going to just
8 suddenly on the 17th you're going to have answer. I mean, if I
9 knew -- and if we all knew there was going to be a plan that
10 might be something else, but that's immature.

11 MR. KAROTKIN: But, again, we're talking about the
12 normal negotiation in the claims process which always takes
13 place. And you can revisit this. First of all, they're not
14 ready for trial, they have to take expert depositions. You can
15 revisit this at the appropriate time, and it's not going to
16 delay -- if you then decided that this trial should go forward
17 it's not going to delay anything.

18 THE COURT: Well, and I think --

19 MR. KAROTKIN: Again, I think what we're concerned
20 about is --

21 THE COURT: -- it might --

22 MR. KAROTKIN: -- if you were to grant this motion we
23 got another fifty other people coming forward.

24 THE COURT: No, I -- and I'm -- Mr. Karotkin, I'm
25 mindful of that and you're not preaching to somebody who isn't

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1 listening to you. But I don't -- I can't sort of keep the time
2 safe from the Gelmans, it's going to move too. And so if we
3 revisit this in September or November who knows where that
4 trial will be. And I agree it might be the same boat for a
5 hundred other cases, and thousands more fire claimants. I'm
6 not unaware of that.

7 Mr. Wessel, did you want to say something? Again,
8 just stand near a microphone, I don't want to make you jump up
9 and down if it's inconvenient for you.

10 MR. WESSEL: Your Honor, you were talking about the
11 prejudice to the Gelmans from the risk of inconsistent results.
12 But there's also the prejudice of having to try the case in two
13 proceedings.

14 THE COURT: Yeah, but you said -- you keep saying that
15 as though you don't think you can win against the other
16 defendants. And the fact is if you can win against those other
17 defendants you should be out there doing it --

18 MR. WESSEL: Okay.

19 THE COURT: -- and not worrying about this process.

20 MR. WESSEL: Your Honor, what can happen from a
21 practical standpoint is we can go to trial against San
22 Francisco and Blue Plantain and win.

23 THE COURT: That's right.

24 MR. WESSEL: They could be found partially at fault.

25 Then we still have to go against --

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1 THE COURT: I don't know, it depends how much you win.

2 MR. WESSEL: We still would have to go against PG&E,
3 because --

4 THE COURT: Why? Why would you have to?

5 MR. WESSEL: Because they would have a percentage of
6 fault.

7 THE COURT: Why would you have to if you got an
8 adequate recovery from the other defendants?

9 MR. WESSEL: This -- and we're talking about
10 speculation here, Your Honor. But what I'm dealing with is
11 right now, we have to get ready for a trial. We have a three-
12 year statute.

13 THE COURT: No, you don't. It's --

14 MR. WESSEL: Yes, there's a --

15 THE COURT: -- it's tolled by the bankruptcy.

16 MR. WESSEL: No, because there's no --

17 THE COURT: Mr. Wessel, it's tolled --

18 MR. WESSEL: -- stay against the city.

19 THE COURT: It's tolled by this defendant, not the
20 others.

21 MR. WESSEL: But you see, we have to proceed against
22 the other defendants.

23 THE COURT: Again, I don't know how many times I have
24 to tell you you have that option, you just don't want to accept
25 it. But you have that option. And I don't understand why you

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1 aren't interested in doing that. But you'll have to make your
2 own call on that. I have to decide yes or no on this debtor
3 and this stay, and I can tell you early in this case the
4 debtor, through other -- on these counsel, but in other
5 proceedings sought to stay certain actions against other
6 parties, your client wasn't on that list.

7 So in other matters, where there were other
8 defendants, there was a stay entered. But here nobody asked,
9 and no one has asked to this moment that I stay the action
10 against Blue Plantain and CCSF. But if you choose not to do it
11 that's your choice, I'm not going to try to talk to you into
12 it, other than to tell you it's a choice.

13 MR. WESSEL: Well --

14 THE COURT: All right. Well, and if you want to make
15 any further argument about -- now you've heard --

16 MR. WESSEL: Yes.

17 THE COURT: -- Mr. Karotkin and Ms. Tran say what they
18 say.

19 MR. WESSEL: Yes. With respect to -- so they tried to
20 make a case for prejudice, but they haven't done that. So
21 we --

22 THE COURT: Well, I think they have, because what
23 they're reminding me is if that I grant relief from you there'd
24 be a hundred more. And that might not be what the Gelmans want
25 to hear or you. But I can't ignore that, and the debtor's

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1 counsel can't ignore that.

2 MR. WESSEL: Those hundred more can move for relief --

3 THE COURT: Yes.

4 MR. WESSEL: -- regardless of what the Court does with
5 respect to this motion.

6 THE COURT: That's correct.

7 MR. WESSEL: And so the point is with respect to this
8 particular case, the Gelmans' case, granting relief is not
9 going to really increase the costs to the bankruptcy estate
10 because if we proceed against San Francisco and Blue Plantain,
11 we will have to take the deposition of PG&E and the Court will
12 allow that, because --

13 THE COURT: The law allows that.

14 MR. WESSEL: Right. So we will have to take the
15 depositions of PG&E, PG&E will have to have --

16 THE COURT: I thought you said all that was left were
17 experts.

18 MR. WESSEL: Ex --

19 THE COURT: Why would you take --

20 MR. WESSEL: So I pointed out the --

21 THE COURT: Why would you be taking PG&E --

22 MR. WESSEL: I pointed out in the moving papers, Your
23 Honor, that we had noticed the deposition of PG&E, but PG&E
24 refused to show up.

25 THE COURT: Mr. Wessel, I don't memorize every word

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1 that people argue. I asked you what was left, and you said
2 there were expert testimony. If you're telling me there's
3 still discovery against the PG&E percipient witness, okay,
4 that's your representation, I'll take it.

5 MR. WESSEL: And on top of that -- so PG&E will have
6 lawyers at that deposition, and PG&E will likely want to -- may
7 want to sit in on the experts, or get the transcripts of the
8 depositions of the experts for their lawyers. And if PG&E
9 witnesses are called at trial PG&E lawyers will have to prep
10 them, and PG&E lawyers may be at the trial.

11 All of this -- we will -- all this will cause PG&E to
12 incur litigation costs even if PG&E is not part of the trial.
13 And --

14 THE COURT: All right. I'm going to take the matter
15 under advisement. I'll give you a ruling here very shortly.
16 But I'm going to give this some thought.

17 MR. WELSH: Your Honor --

18 THE COURT: Yes.

19 MR. WELSH: -- may I be heard?

20 THE COURT: Who's that? Who's speaking?

21 MR. WELSH: My name is Leonard Welsh. I'm an attorney
22 in Bakersfield, California and I represent a number of
23 nonwildfire personal injury claimants also.

24 THE COURT: Mr. --

25 MR. WELSH: I am not a party to this motion --

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1 THE COURT: Mr. Welsh, I'm not going to hear from you
2 on this subject, you're not a party to this motion and I'm not
3 going to turn this into a discussion about what to do about the
4 other victims. I'm sorry, I'm not going to turn that into --
5 we have other matters on the calendar today. So I hate to be
6 rude, but I'm not going to hear your comments.

7 MR. WELSH: I understand, Your Honor.

8 THE COURT: So the matter's --

9 MR. WELSH: Thank you.

10 THE COURT: All right. All right. The matter stands
11 submitted.

12 MR. WESSEL: Thank you.

13 THE COURT: I will act on it quickly I promise you.

14 Mr. Karotkin, we're going to go to collateral or term,
15 your call?

16 MR. KAROTKIN: Collateral, Your Honor.

17 THE COURT: Okay. Mr. Lapping.

18 MR. LAPPING: Good morning, Your Honor. Richard
19 Lapping on behalf of Valero Refining Corporation-California
20 (sic).

21 THE COURT: And who's appearing for the debtor?
22 You're doing that again Mr. -- Mr. Lapping, preliminary
23 question. You have -- we're showing on the calendar at least
24 the motion to -- regarding the sealed documents. But you --
25 did you really want to be heard on that, it was --

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1 MR. LAPPING: Not -- well, Your Honor --

2 THE COURT: Those are typically granted if
3 everything's in order, and I haven't heard any opposition.

4 MR. LAPPING: Right. We had a stipulation that we
5 could submit the insurance policies that were produced --

6 THE COURT: Yeah, that's what I thought.

7 MR. LAPPING: -- subject to the usual rules. And so I
8 filed the motion per the usual rule.

9 THE COURT: No, but I would have -- typically, those
10 motions come in just on an ex parte basis, so -- that's fine,
11 I'll grant -- I've already -- I mean, it's already been
12 granted, I think.

13 MR. LAPPING: Great. Well --

14 THE COURT: I've reviewed them.

15 MR. LAPPING: I just wanted to make sure it was on the
16 calendar no later than today.

17 THE COURT: I'm trying to tell you it didn't have to
18 be on the calendar. I think I've signed an order. If I
19 haven't I will, and I understand. And I've reviewed a portion
20 of it in any event, which is what I'm supposed to do.

21 So you heard -- you heard the arguments from -- in the
22 Gelman case, which is not your case, and your case is obviously
23 much different. But what's different about it since -- that
24 you want me to consider?

25 MR. LAPPING: Well, what's different is because we

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1 have a seventy-five-million-dollar claim and they publicly
2 state -- and that's correct, that they have a ten million-
3 dollar SIR, then this claim is not -- it doesn't fit squarely
4 within the -- it's all covered by insurance. But the part that
5 isn't covered by insurance would then just become a claim if we
6 prevail in the litigation. It becomes a liquidated claim for
7 whatever the insurance doesn't cover.

8 THE COURT: But you heard Mr. Karotkin correctly state
9 that people start to come to the table when there's a bar
10 date -- after bar date, and they negotiate. That may happen
11 here too, I understand.

12 MR. LAPPING: Well, let me give you some background
13 then, Your Honor.

14 During the period the last sixty days we propounded
15 discovery about the insurance policies, and also about what
16 other claims were pending that would impact PG&E's insurance
17 for this particular year, which precedes the year of the
18 wildfires. And the answer was that's irrelevant. And I think
19 that means that they don't have any claims in this policy here
20 that affect these policies.

21 So we're essentially the only ones with a claim
22 against this insurance policy. And it covers our claim except
23 for whatever the SIR is. And they -- you know, they have used
24 some of that, and the balance would be used in part for
25 expenditure of legal expenses, which we cite the case Santa

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1 Clara County Fair Association, that litigation expense per se
2 is not grounds for denying relief from stay.

3 So what we have is we've got this seventy-five-
4 million-dollar claim that is fully covered by insurance, except
5 for possibly two or three million dollars. And so --

6 THE COURT: I'm sorry, I lost you. I thought you said
7 there's a ten-million-dollar --

8 MR. LAPPING: That's the SIR.

9 THE COURT: Be more specific.

10 MR. LAPPING: The self -- that's the deductible.

11 THE COURT: Okay.

12 MR. LAPPING: The deductible is ten million dollars.
13 The insurance I can't say what it is, but we've given you the
14 policies, and in our brief the part that is redacted it
15 indicates that there's plenty --

16 THE COURT: Okay.

17 MR. LAPPING: -- of coverage for this claim.

18 THE COURT: So if you get a judgment the debtor has to
19 pay ten million dollars.

20 MR. LAPPING: Well, they can deduct whatever they've
21 spent on defending the case, and then the balance would become
22 a claim in the bankruptcy. But anything over that would be
23 paid by the insurance.

24 THE COURT: So if you got a recovery from the
25 insurance company, plus an amount that's still covered under

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1 the SIR you would have a claim, and you just would have an
2 allowed claim in that amount. But still -- but it still
3 requires a liquidation of the claim, which is what the debtor's
4 resisting on some of these other claims.

5 MR. LAPPING: Well, yes, but as he said clearly all
6 those other claims are not subject to insurance because of the
7 deductible. They don't have any other claims. All those
8 smaller claims are not -- and there's a ten-million-dollar
9 deductible per occurrence. So unless there's a raft of claims,
10 all of them in excess of ten million dollars, that -- we're not
11 talking about that. This is unique in that sense. It is a
12 unique situation, it fits squarely within the concept of
13 covered by insurance, except for some small increment.

14 THE COURT: So if you -- but you haven't asked for
15 relief from stay to go only against the insurance, which is
16 sometimes what people do.

17 MR. LAPPING: Well --

18 THE COURT: I understand, you're not asking to be
19 paid, you're asking to liquidate the claim in its entirety.

20 MR. LAPPING: Right.

21 THE COURT: Right, okay.

22 MR. LAPPING: And it still presents -- even if we just
23 went after the insurance, the insurance company would say well,
24 we're not going to pay for the defense, so it kind of doesn't
25 matter. PG&E still has to expend whatever resources it wants

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1 to to defend the claim. And that has to -- that's just there.

2 But the complexity of this case -- and, again, this
3 one -- this one truly is ready for trial. Recall --

4 THE COURT: No, I know that.

5 MR. LAPPING: -- we had a trial date.

6 THE COURT: Is there a mandatory mediation or
7 settlement conference.

8 MR. LAPPING: Well, Your Honor, there was a mediation
9 set up, and Valero's position was we'll go to a mediation
10 provided PG&E brings its carriers with authority. And they
11 said they would do that I believe. But then -- the mediation
12 fell during that period, after they announced the bankruptcy --

13 THE COURT: Okay.

14 MR. LAPPING: -- and so they said you know, we're not
15 coming.

16 THE COURT: But the point is if you get relief from
17 stay the trial judge can make a decision on whether he orders
18 the parties to mediation in any event, right?

19 MR. LAPPING: Well, right. And without a trial date,
20 I think as somebody observed earlier, it's hard to get a
21 mediation to succeed.

22 THE COURT: Ms. Tran, you want to take a shot at it?

23 MS. TRAN: So, Your Honor, I'll try to address some of
24 the points that Mr. Lapping raised.

25 The first was the point on the insurance coverage. As

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1 an initial matter I think that he misstates the law and the
2 Curtis Factor of how insurance coverage plays into balancing
3 whether or not lift of stay is appropriate. And the factor
4 isn't whether or not there's insurance coverage, the factor is
5 whether or not the insured carrier has assumed full financial
6 responsibility for defending the litigation, which as Mr.
7 Lapping concedes that's not the case here.

8 And he's correct that we have been engaging and
9 coordinating with respect to their discovery relating to the
10 motion. And -- but what Mr. Lapping fails to report to the
11 Court is that we also informed Mr. Lapping that the insurers
12 here have sent a reservation of rights letter, which means that
13 there's potentially no coverage at all with respect to Valero's
14 claims.

15 THE COURT: Well, if that's the case and if it goes to
16 trial, and the court determines, or the jury, whatever it is,
17 determine a liability I guess the insurer will have to decide
18 whether to pony up or not. And if not, then Mr. Lapping's
19 clients got to stand in line with a liquidated claim.

20 I mean, this is -- one way or the other there's a
21 large exposure here of the debtor, either the amount of the
22 uninsured portion, of the deductible, or more. But one way or
23 the other it has to be liquidated.

24 And, again, Mr. Karotkin made his point, and you've
25 made it, about these claim things have to happen.

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1 But --

2 MS. TRAN: Right.

3 THE COURT: -- this is -- there's not a hundred of
4 these in the pipeline, this is the only one I'm aware of. And
5 maybe you would tell me if there are others. But this is a
6 substantial claim involving something that has -- you know,
7 like any other tort it's unique to itself, but it's not like
8 thousands and thousands of wildfire victims. How does this
9 thing get liquidated if not by trial at this point?

10 MS. TRAN: And that's correct, Your Honor. And as we
11 had discussed at the last preliminary hearing, the fact is that
12 none of the factors weigh in favor of lifting the stay, and
13 that Valero hasn't really made an initial burden of showing
14 that. And in terms of how to determine liability, I think that
15 the debtors remain open to settlement negotiations and
16 mediation.

17 THE COURT: Yeah, as I'd --

18 MS. TRAN: As Mr. --

19 THE COURT: -- said before. Sometimes a trial date is
20 a motivator.

21 My point is this --

22 MS. TRAN: And there is no trial day right now, Your
23 Honor.

24 THE COURT: Well, there was one.

25 MS. TRAN: It has been taken off calendar.

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1 THE COURT: There was one, right? --

2 MR. KAROTKIN: Yes.

3 THE COURT: Do either of you know what Judge Nunley's
4 calendar is like, when this is likely to go to trial?

5 MS. TRAN: I do not. But my understanding is that it
6 has been taken off calendar, there's no indication as to when
7 it would be rescheduled.

8 THE COURT: You have any knowledge of that, Mr.
9 Lapping?

10 MR. LAPPING: Your Honor, we filed a paper with the
11 district court as we announced we would last time, indicating
12 that the court had continued this hearing.

13 THE COURT: Right. Right.

14 MR. LAPPING: And I have not seen anything on the
15 calendar, and I don't know that -- it's hard to tell that far
16 ahead whether he's scheduled something else on that slot.

17 THE COURT: No, but I mean some district judges have
18 big criminal matters that are blocking out months at a time. I
19 mean, I talked to one of the judges here who has a four-month
20 trial going on. You know, I can't imagine what that would be
21 like. But --

22 MR. LAPPING: I can't represent anything on that
23 front.

24 THE COURT: All right.

25 MR. LAPPING: But I can point -- you know, every

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1 insurance company that gets a claim like this they issue a
2 reservation of rights letter. I haven't seen this one, they
3 haven't produced it to me. I don't know what it says, I don't
4 know whether it's just the standard --

5 THE COURT: Understood.

6 MR. LAPPING: -- we don't want to pay this claim kind
7 of letter or not.

8 THE COURT: Okay. Mr. Karotkin, you want to comment
9 on the whole claims issue?

10 MR. KAROTKIN: Yeah, I want to. Thank you.

11 THE COURT: What'd you do, knock the fuzzy off of it?

12 MR. KAROTKIN: Yeah, I knocked the fuzzy off.

13 Your Honor, this is a classic automatic stay case.

14 THE COURT: Yeah, I know.

15 MR. KAROTKIN: This is what the automatic stay is all
16 about.

17 I think counsel has indicated it's not ready for
18 trial. This is what the claims resolution process in the
19 bankruptcy court is all about.

20 THE COURT: Well, it's the same as you said on the
21 other one too.

22 MR. KAROTKIN: Yeah. But this is even more so.

23 I mean, there's an obligation to file the claim with a
24 bar date like any other claim. Whether it's a trade claim, a
25 bank debt claim, a bond claim, that is what the claims

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1 resolution process in bankruptcy is all about. And the
2 automatic stay is expressly designed to prevent -- to give the
3 debtor breathing room to prevent these cases from going
4 forward.

5 If you were to modify the stay as to this, Your Honor,
6 you might have well have modified it to every single claim filed
7 in the case.

8 THE COURT: Well --

9 MR. KAROTKIN: This is absolutely no different from
10 any other --

11 THE COURT: That's a bit of a broad statement that
12 you're making. That this is a unique one, it's a large sum of
13 money.

14 MR. KAROTKIN: It's not unique in any way.

15 THE COURT: Do we know that?

16 MR. KAROTKIN: It is a breach of contract claim, or
17 whatever it is, it's a classic pre-petition claim.

18 THE COURT: Okay. So the claims bar date comes and
19 whoever files a proof of claim, you're going to object to the
20 claim, or we have this --

21 MR. KAROTKIN: We may or we may not.

22 THE COURT: -- the same --

23 MR. KAROTKIN: We may try to settle it. But again,
24 Your Honor, that's what the claims resolution process --

25 THE COURT: Yeah, I know.

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1 MR. KAROTKIN: -- in the bankruptcy court is all
2 about. That's how the objections-to-claim process works, in a
3 summary proceeding --

4 THE COURT: I know that.

5 MR. KAROTKIN: -- in this court.

6 THE COURT: I know that.

7 MR. KAROTKIN: To get it done quickly and
8 inexpensively -- not to modify the estate, to allow pre-
9 petition litigation to go forward. That's not what it's all
10 about.

11 THE COURT: Well, okay, then we have a slight
12 difference of opinion, and at some point, it is appropriate.
13 But all right, I got it.

14 Anything further, Mr. Lapping?

15 MR. LAPPING: No, Your Honor, I just -- I'll stand on
16 my papers. I think we hit all the Curtis factors that are
17 applicable. But what does distinguish this claim is the
18 insurance coverage that's available to date. We're the only
19 claim that has a shot at that particular insurance here, and
20 that makes us unique.

21 THE COURT: Yeah, but -- okay, all right. Well, I'm
22 going to treat this the same way I did Gelman. I'm going to
23 take it under advisement. I don't normally do that, but
24 because of the timing in the case and so on, I will issue
25 something fairly soon. Matter stands submitted.

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1 MR. LAPPING: Thank you, Your Honor.

2 THE COURT: All right.

3 Mr. Karotkin, do you want to take a break again, or
4 should we go straight to the last item? I'm comfortable to go
5 either way. It's up to you.

6 MR. KAROTKIN: I'd like to move ahead.

7 THE COURT: Okay.

8 MR. KAROTKIN: Thank you.

9 THE COURT: Then let's do it.

10 Oh, Mr. Harris, are you here? Sorry to keep you
11 waiting.

12 MR. HARRIS: It was educational, Your Honor.

13 THE COURT: Okay, so --

14 MR. HARRIS: Robert Harris, of Binder & Malter,
15 appearing for TURN, The Utility Reform Network, moving party.

16 THE COURT: And you heard me say before about the
17 timing.

18 MR. HARRIS: I did, Your Honor.

19 THE COURT: Okay.

20 MR. HARRIS: Thirty minutes for everyone on our side.

21 THE COURT: Yeah, and you might want to reserve some
22 for closing.

23 MR. HARRIS: Absolutely. I actually only have a
24 relatively short opening, Your Honor. I don't think there's
25 any need to repeat what's in the pleadings.

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1 THE COURT: Okay.

2 MR. HARRIS: I think that I expect to hear plenty of
3 questions about where you have issues.

4 THE COURT: I might have some questions.

5 MR. HARRIS: One or two. I would, however, like to
6 focus the Court on three points, if I may. First, Your Honor,
7 why it's so important to have an official committee in this
8 case. Your Honor, we've said in our papers that --

9 THE COURT: I think I know that.

10 MR. HARRIS: Well, I'm going somewhere.

11 THE COURT: The question is can there be. Does the
12 law permit it? It's that simple. I mean, it's that simple.
13 Why did I deny it before? I didn't believe the law permitted
14 it. So the question is, does the law permit it as I --

15 MR. HARRIS: Well, but I have an overview point, if
16 you will.

17 THE COURT: Okay, go ahead.

18 MR. HARRIS: And it's this. There are millions of
19 people, businesses and entities, that are potentially
20 ratepayers, who would be the constituents of this committee.
21 And the formation of a committee does something very special.
22 It creates a fiduciary relationship between the members of that
23 committee and those constituents, that really doesn't exist
24 right now. There are ad hoc committees out there that
25 represent particular interests. TURN has some relationship to

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1 its members, but it's very different when you have an official
2 committee that is dutybound to represent the interests of all
3 of the ratepayers of the state.

4 And effective participation in this case, obviously,
5 requires, Your Honor, that that committee get counsel, get
6 professionals. With 6.15 million individuals, their interests
7 are so small and so diffused, that while it's been said that
8 there's a possibility that those ratepayers could appear and be
9 heard and maybe get paid on a substantial contribution basis,
10 the reality is that's never going to happen.

11 THE COURT: Well, you made that point as though you
12 didn't understand the DIP financing. I mean, I can never in my
13 recall -- in memory recall a case that had such leverage to --
14 in favor of the unsecured component. Even if you accept that
15 the dollars on the asset side, maybe aren't nine -- I mean,
16 seventy billion, the debt is only five or six billion. So
17 there is a huge cushion that would compensate somebody that
18 made a substantial contribution. You don't really doubt that,
19 do you?

20 MR. HARRIS: No, but, Your Honor, that --

21 THE COURT: You don't really doubt that the DIP
22 lenders are -- and think, the DIP lenders are going to swoop up
23 all the assets.

24 MR. HARRIS: I think in the short term that there is
25 an ability to get paid. I think in the long term, seeing this

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1 is the case is, you may be right, but subject to what happens
2 with the tort claimants, but the truth is, to ask counsel or
3 the ratepayers to finance that entire period from now until
4 when the plan gets confirmed and the debtor has to pay its
5 priority claims.

6 THE COURT: So that's the difference between having a
7 committee or not a committee is, who pays the lawyer? I mean,
8 it really comes down to that, doesn't it?

9 MR. HARRIS: That is a lot of it, Your Honor.

10 THE COURT: I understand.

11 MR. HARRIS: We're trying to create an efficient
12 mechanism to give the ratepayers a voice in this case, to let
13 them be heard on the key decisions --

14 THE COURT: So you -- as I recall, and somewhere in
15 the papers on the petition date, TURN and some of the other
16 entities that are volunteering, weren't even -- didn't even
17 have standing. Now your client, TURN, has acquired a claim.

18 MR. HARRIS: Yes, Your Honor, that's correct.

19 THE COURT: Is that a bit of a fabrication that it
20 really isn't a rate -- it isn't really a creditor; it just
21 became one?

22 MR. HARRIS: Well, Your Honor, it was a technical
23 response to a technical argument. The argument --

24 THE COURT: Well, is it technical?

25 MR. HARRIS: It is, Your Honor, because the real

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1 parties --

2 THE COURT: I mean, every member of the tort committee
3 and I assume every member of the official committee are
4 creditors --

5 MR. HARRIS: Your Honor --

6 THE COURT: -- not representatives of creditors.

7 MR. HARRIS: TURN is not asking to be an official
8 member of the ratepayers committee. It's rather offering to be
9 an ex officio member.

10 THE COURT: So what would its role be if the U.S. --
11 if I agree with you and direct the U.S. Trustee to appoint a
12 ratepayers committee? Just a bunch of ratepayers, and then
13 what is TURN's role then after that?

14 MR. HARRIS: TURN would offer its services as an ex
15 officio member, Your Honor, to serve -- to aid the committee in
16 its process.

17 THE COURT: Okay, let's get to the question of claim.

18 MR. HARRIS: Absolutely, Your Honor.

19 THE COURT: You know that my prior ruling said they're
20 not creditors. Your argument here is they are creditors. Now,
21 let's -- you know me and I like hypotheticals, right?

22 MR. HARRIS: Okay.

23 THE COURT: So I don't know what your personal bill
24 is. I assume you don't live on a mountaintop somewhere off the
25 grid, so let's assume you have a hundred-dollar-a-month PG&E

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1 bill, and you get a five-dollar credit, based upon the CPUC
2 ruling. The day you get your bill, your credit's paid, and
3 you're not a creditor anymore, right? What happened? How did
4 you -- on the petition date, if that's a magic date, when you
5 owe a hundred dollars, but the utility owes you five, let's
6 technically say, in bankruptcy terms, you are a creditor,
7 admittedly secured, offset creditor. But the very next day or
8 the next bill or the next some event, it's gone. So are you no
9 longer eligible to be on a creditors committee, right?

10 MR. HARRIS: Well, Your Honor --

11 THE COURT: Because you're not a creditor.

12 MR. HARRIS: -- we're working within your
13 hypothetical.

14 THE COURT: Right.

15 MR. HARRIS: The first thing that PG&E would have done
16 with that first bill or payment, is they wouldn't have paid the
17 full five dollars.

18 THE COURT: That's right.

19 MR. HARRIS: So maybe I'm still owed --

20 THE COURT: They would have --

21 MR. HARRIS: -- two or three or four.

22 THE COURT: They would have paid you the debt. Or you
23 would have -- no, they would have billed you the net. They
24 would have paid it via credit.

25 MR. HARRIS: But that's not the case here, Your Honor.

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1 They're not paying the entire pre-petition debt in the April
2 bill. There's still the October bill to come, for one. Two,
3 there are other bases for claims that we referenced in our
4 reply brief --

5 THE COURT: I know, but that's in your reply brief.
6 Let's stick with the original point about the CPUC rebate. I
7 don't have the right terms; you know the terms. They're
8 technical. At some point, they just disappear, right? In
9 other words, it went away -- not to mention the fact that on
10 our first day, I issued orders that directs and authorizes the
11 debtor, essentially, to pay them.

12 I guess what I'm trying to say is, if you think it's
13 being technical, it seems to me like the ratepayers, if they
14 were sort of metaphysically creditors on one day, they stopped
15 being creditors until -- at some other date, and if they become
16 creditors on the next billing cycle, they're post-petition
17 creditors, for which there's no concept for a committee.

18 MR. HARRIS: Your Honor, I want to clarify my --

19 THE COURT: How do I get around that?

20 MR. HARRIS: Well, let me clarify my comment about --

21 THE COURT: Okay.

22 MR. HARRIS: -- the technicality. The technicality
23 was something that the creditors committee raised with respect
24 to TURN's standing to bring the motion, not the ratepayers
25 holding claims in the case.

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1 THE COURT: Okay, but I --

2 MR. HARRIS: So when I said technical, that's what I
3 meant.

4 THE COURT: Okay, but I'm talking about the ratepayer
5 committee is a statutory -- I mean, you believe that the
6 statute allows me to order the U.S. Trustee to direct a
7 committee of ratepayers --

8 MR. HARRIS: Yes, Your Honor.

9 THE COURT: -- because you believe ratepayers are
10 creditors.

11 MR. HARRIS: They have over 400 million dollars in
12 pre-petition claims.

13 THE COURT: And why are they creditors under your
14 analysis?

15 MR. HARRIS: Because they have over 400 million
16 dollars in pre-petition claims. They have direct rights under
17 utility law --

18 THE COURT: And where did those pre --

19 MR. HARRIS: -- to recover those.

20 THE COURT: Where did those pre-petition claims go on
21 the first billing cycle, if not on the -- instantly?

22 MR. HARRIS: A portion of the GHG allowances that are
23 to be credited, get paid -- got paid, I should say, in April.
24 Another portion, perhaps probably the entire balance is to paid
25 in October, months into the future.

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1 THE COURT: So that means --

2 MR. HARRIS: So we are still creditors.

3 THE COURT: So that means that by October, there's no
4 more creditors. So even if I --

5 MR. HARRIS: On --

6 THE COURT: Even if I accepted your argument, which
7 I'm not sure I believe, but even on that argument, they're
8 gone; they're out of business as creditors. I'm not making
9 light of it. I know their concerns. Listen, this is not
10 personal. I'm not trying to say that TURN or the ratepayers
11 aren't voices and don't have a role. You know my view on CPUC
12 as well, they should be heard. But how do I get around the
13 fact that even if they were metaphysically creditors, they
14 aren't creditors anymore at some point, and in the near future,
15 if not already.

16 MR. HARRIS: They may not be creditors, Your Honor.
17 We don't know that PG is going to comply with the law. We
18 don't know what's going to happen in this case.

19 THE COURT: Well, because I, kind of, assume they are,
20 okay?

21 MR. HARRIS: But what if they make an application to
22 the CPUC to change the repayment for a period? They can do
23 that. San Diego Gas & Electric did that.

24 THE COURT: But it's --

25 MR. HARRIS: What if --

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1 THE COURT: It's a setoff right. I mean, in other
2 words, the difference is we're talking about bankruptcy rights
3 that were frozen on the petition date, right? So on that day
4 there was some entitlement to some credit, and there may be a
5 customer somewhere who walked into the office of PG&E that day
6 and said I'd like to pay my bill, paid the hundred bucks and
7 said now where's my five dollars? But in reality -- in the
8 real world of people living, these six million people like you
9 and me and the rest of us, they stopped being creditors for
10 these purposes, as a matter of law, as this process plays out.

11 MR. HARRIS: Well, I would respectfully disagree that
12 it's a setoff right, Your Honor.

13 THE COURT: Okay.

14 MR. HARRIS: This is not an overcharge, which is then
15 subject to rebate and setoff. This is, in fact, and I'm
16 reading from the request for judicial notice, a decision
17 adopting the Cap-and-Trade Greenhouse Allowance. CPUC finds:

18 "We decline at this time to allocate any portion of
19 the greenhouse gas allowances towards clean energy or energy
20 efficiency resources, preferring to focus our initial efforts
21 on maximizing the amount of revenues returned directly to
22 residential ratepayers. We take this approach to mitigate the
23 increased cost of goods and services that will ultimately be
24 borne by residential ratepayers as businesses pass on the
25 carbon cost embedded in their electricity rates."

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1 So it's not the original obligation of PG&E. It's not
2 something they did. It's something that the legislature
3 determined had to be paid to creditors.

4 THE COURT: Well, wait.

5 MR. HARRIS: It's not an offset.

6 THE COURT: But what is it in bankruptcy terms?

7 MR. HARRIS: It's a claim. The California Air --

8 THE COURT: It's a claim, but it's not an offset?

9 MR. HARRIS: No, it's not. The California Air
10 Resources Board sells allowances. It says to PG&E, here's the
11 money.

12 THE COURT: But it was and will be paid, right? And
13 has been paid in part.

14 MR. HARRIS: It is scheduled to be paid. I don't
15 believe that the debtor is obligated by your order. I believe
16 that the order says the debtor is permitted.

17 THE COURT: Do you think, as a matter of bankruptcy
18 law, it's a claim?

19 MR. HARRIS: Yes. I do, Your Honor. Absolutely.

20 THE COURT: Okay.

21 MR. HARRIS: And if the debt --

22 THE COURT: Because if you say no to that, you're out
23 of business, right? It has to be a claim to be a hold by a
24 creditor who could there -- be on a committee, so --

25 But why isn't it subject to the common law doctrines

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1 of setoff?

2 MR. HARRIS: Because I don't believe --

3 THE COURT: Because a claim -- the entitlement of
4 going from A to B that coexists at the same time an entitlement
5 goes from B to A offset themselves as a matter of law.

6 MR. HARRIS: It's not the same.

7 THE COURT: Even if you don't call it an offset, or
8 you don't call it anything, it happens as a matter of law.

9 MR. HARRIS: Your Honor, I believe it's different
10 transactions. I believe it's different obligations. There is
11 money somewhere that is owed.

12 I'm not here arguing it's a constructive trust.
13 You'll notice that.

14 THE COURT: I know you're not.

15 MR. HARRIS: So --

16 THE COURT: I know you're not. So my point is as a
17 matter of bankruptcy law it's a setoff. If it were the same
18 transaction, it might be subject to recoupment. But either
19 way, that's bankruptcy terms and common law terms.

20 The point is that under my hypothetical you owe a
21 hundred dollars for your bill. The utility owes you five
22 dollars for the Greenhouse Cap-and-Trade, whatever the right
23 label is. They existed on the same day, right?

24 MR. HARRIS: They did, Your Honor, and I believe that
25 under utility law there's an enforceable right to payment,

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1 which is the key to determination of whether there is a claim
2 sufficient to allow ratepayers to seek and serve on a
3 committee.

4 THE COURT: So we're back to my first day order. The
5 debtor was authorized to pay it.

6 Now, are you really going to pretend that maybe they
7 aren't going to pay it so they can leave you as a 5 dollar
8 creditor or a \$2.50 creditor? I guess my point is I don't know
9 how we get to where you want me to be, because it seems like it
10 comes back to that same starting point. If there was a claim
11 at all, it got compensated. And so you can't have a committee
12 of former creditors.

13 MR. HARRIS: Well, it may, in the future, be
14 compensated, Your Honor.

15 THE COURT: Then it's a post-petition, and there's no
16 such animal as a post-petition creditors' committee.

17 MR. HARRIS: No. It's a payment of a pre-petition
18 claim post-petition. That's what we're dealing with here. And
19 should there be a committee to exist while hundreds of millions
20 of dollars are owed to millions -- 6.1 million individual
21 ratepayers?

22 And let me add, Your Honor, that there are other
23 ratepayers involved in this case. It's not just the damages
24 from the San Bruno fire --

25 THE COURT: I know. I know.

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1 MR. HARRIS: -- which we detailed in our supplemental
2 RJN.

3 THE COURT: Well, you've got Northern Cal Power.
4 They're in this as a wholesale claimant.

5 MR. HARRIS: You've got Cal Power.

6 THE COURT: They're a different kind of creditor.

7 MR. HARRIS: They are a different kind of creditor.

8 THE COURT: Right.

9 MR. HARRIS: But we're asking for a committee that's
10 diverse, that includes all the ratepayers of the State of
11 California, because that's what it's going to take to generate
12 a sufficient amount of certainty, a sufficient amount of trust
13 in the decisions of this Court, have ratepayers participating
14 and showing that the public interest has been served by
15 appointment of a committee.

16 THE COURT: Are you going to share some time with --

17 MR. HARRIS: I will. I'd like to stop for now. Thank
18 you.

19 THE COURT: Okay. And who are you sharing it with?

20 MR. HARRIS: I believe Nora Sheriff.

21 THE COURT: Okay.

22 MR. HARRIS: Counsel for the California Large Energy
23 users.

24 THE COURT: Okay. Thank you. Good afternoon.

25 MS. SHERIFF: Good afternoon, Your Honor.

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1 THE COURT: Let me have your name again, please.

2 MS. SHERIFF: Nora Sheriff. I'm counsel for the
3 California Large Energy Consumers Association or CLECA. I
4 usually appear before the California Public Utilities
5 Commission down at 505 Van Ness.

6 THE COURT: Welcome to the bankruptcy court.

7 MS. SHERIFF: Thank you. It's my first time.

8 So CLECA is an organization of large industrial
9 customers of PG&E and Southern California Edison that are in
10 the cement, steel, industrial gas, beverage, pipeline
11 transportation, mining and cold storage industries, so distinct
12 from the residential customers and small business customers
13 that TURN represents. They share the fact that the cost of
14 electricity is a significant component of their cost of
15 manufacturing their product or providing their service, between
16 forty percent to upwards of eighty percent of their costs. And
17 I heard what you said about ratepayers needing to go to the
18 commission and have their concerns heard there. And that's
19 normally what I do.

20 There are a couple of ongoing proceedings of the
21 Public Utilities Commission that have an interplay with what
22 you're doing here, Your Honor, in the bankruptcy proceeding,
23 and ratepayers have asked the Commission for increased
24 transparency and clarity in those proceedings where there is
25 overlap and interplay -- the Financial Stress Test proceeding,

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1 which is Rulemaking 1901-006, the Safety Culture Investigation
2 proceeding, Investigation 15-08-019 -- and we've asked for
3 information about what the process is going to be to enable us
4 to have that voice, and those requests have not been answered
5 yet.

6 I understand the Public Utilities Commission is
7 working very hard on a lot of weighty matters.

8 THE COURT: But their job is to decide. I mean, to
9 answer one way or the other. And I have nothing to do with
10 that decision, right?

11 MS. SHERIFF: But --

12 THE COURT: Mine is a pure Bankruptcy Code
13 interpretation. So, I mean, again, I'm sympathetic, but what
14 do you think I should do as a matter of bankruptcy law?

15 MS. SHERIFF: I think you should use your discretion
16 to enable us to participate officially on this side of the
17 regulatory divide.

18 THE COURT: But do you think it's discretionary? I
19 mean, are you familiar with the ruling I made with the
20 municipalities that asked for a committee?

21 MS. SHERIFF: Your Honor, I apologize.

22 THE COURT: Well --

23 MS. SHERIFF: I am not.

24 THE COURT: Well, early in the case -- early; I mean,
25 the whole case is not that old -- there was a motion to have a

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committee of governmental entities that are fire victims,
including the City of Paradise itself, and there were a number
of others. I've forgotten the name of the group. But they
made the request, and the debtor and the committee and the U.S.
Trustee and I were of the view that we simply didn't have the
statutory authority, because governmental entity is not a
person as defined in the Bankruptcy Code.

And the question is, is a ratepayer a creditor as
defined? No question that an individual ratepayer is a person.
Nobody doubts that. The question is whether it's a creditor.
And Mr. Harris argues that it is, and I'm just asking you that.
This is not about deciding who the good guys or the bad guys
are. I don't know that there is a discretion. I have to
interpret the statute in one way or the other.

But go ahead with the rest of your pitch. I'm
listening.

MS. SHERIFF: Well, I can't claim to be an expert in
bankruptcy law or be able to argue the case law on the
definition of creditors versus noncreditors, et cetera. But
just looking at it from a basic equity point of view.

THE COURT: Yes. Well, equity, you know, if I had
equity, we have a Section called 105 in the Bankruptcy Code.
That says just do whatever you want. But the case law says
we -- but we have to follow the Code.

So are you familiar with the decision I made in 2001?

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1 MS. SHERIFF: In 2001?

2 THE COURT: Yes. I mean, I had essentially the same
3 question. It wasn't teed up the way Mr. Harris has done it
4 here by saying the ratepayers aren't creditors. I just said
5 ratepayers aren't creditors, therefore no committee.

6 And it was, I mean, it's not that I can't change my
7 position. It's that I have to see if there is a change in the
8 law. There's certainly no change in the Bankruptcy Code. The
9 question is whether the arguments that Mr. Harris has made --
10 and yours. I'm not making light of it. I'm saying the
11 fundamental issue is the statute says there can be a committee
12 of creditors and of equity holders. So I have to figure out is
13 a ratepayer -- clearly not an equity holder. Is a ratepayer a
14 creditor for purposes of that statute?

15 Anyway, I don't want to give you a speech. That's
16 just what I'm up against. So I don't think it's
17 discretionary. I think it's interpretation of the statute.

18 MS. SHERIFF: And I do think you can take note of the
19 changes that have occurred since 2001, and you've had an
20 exchange with the TURN counsel on the greenhouse gas credits.
21 I will say that because most of the CLECA members are energy
22 intensive, they do get the energy-intensive, trade-exposed
23 credits, and those are very significant.

24 THE COURT: Well, they're bigger. They're not like my
25 hypothetical of five dollars for Mr. Harris. But there's --

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1 MS. SHERIFF: Exactly.

2 THE COURT: But it's still the concept. They still
3 are smaller than the obligation to pay for the power, right?

4 MS. SHERIFF: But they are important to enable those
5 energy-intensive industrial customers to stay in the State of
6 California, which is why the policy is that they get those
7 credits.

8 THE COURT: No, but what I'm asking you, is there any
9 situation where the credit exceeds the obligation? Using my
10 Harris example, I said if he is billed a hundred dollars, and
11 he gets a five dollar credit, is there a situation that has the
12 number in favor of the ratepayer rather than the utility?

13 MS. SHERIFF: Your Honor, I don't know that off the
14 top of my head. I will confirm with my --

15 THE COURT: Well, probably not.

16 MS. SHERIFF: -- my clients, but --

17 THE COURT: I mean, it's, sort of, counterintuitive.

18 MS. SHERIFF: Right.

19 THE COURT: It's probably not the case.

20 MS. SHERIFF: Well, I mean, when you're looking at
21 annual average bills of over five million dollars, and that can
22 be hard to overcome that.

23 THE COURT: Got it.

24 MS. SHERIFF: But the credits are significant, and I
25 would say that would be one hook that you could use to

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interpret the statute.

THE COURT: Okay, thank you very much.

And we have another -- one more? Are you sharing?

MR. GORTON: Yes, Your Honor. Mr. Gorton. I'd like
to speak.

THE COURT: Oh. Well, Mr. Gorton, I saw your papers,
I got your brief. Nice to see you.

MR. GORTON: Thank you, Your Honor.

THE COURT: Just -- take your appearance for the
record.

MR. GORTON: Pleasure to be here yet again.

THE COURT: You're one of the veterans from before.

MR. GORTON: I represent the Northern California Power
Agency, and NCPA -- that's what we refer to the entity as --

THE COURT: Right.

MR. GORTON: -- is a creditor in the case, based upon
FERC refunds. So we hold claims for FERC refunds. In the
proceedings that we've described in our statement of support
for what's referred to as T018 and T019 --

THE COURT: Yeah; no, I saw that in there.

MR. GORTON: -- there's claims that are -- amount to
something about two-thirds of a billion dollars in rate refunds
for transmission rates that were paid with the approval of the
FERC, subject to refund if the rate was deemed unreasonable.
The ALJ has made a ruling that it appears -- that subject to

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1 FERC confirmation, that there's going to be refunds of about
2 2.3 billion dollars, of which NCPA will receive about 13
3 million dollars; anticipating in that range.

4 In addition -- it's not in my statement of support,
5 I'll acknowledge -- it dawned on me that we're identified as an
6 executory-contract counterparty on twenty-one different
7 executory contracts. So we have unlim -- we have unliquidated
8 contingent claims in the case. We are a creditor. And we are
9 a rate payer. So I think we can go through threshold of
10 saying, we're creditors, so you can have a committee of
11 creditors. There are folks like us who can -- who have
12 creditors' claims, who could support --

13 I acknowledge that we are a governmental unit, and
14 that's why my statement of support says we would be prepared to
15 serve on an ex officio --

16 THE COURT: And you're aware of the --

17 MR. GORTON: -- basis.

18 THE COURT: -- prior ruling that I made --

19 MR. GORTON: I am, Your Honor.

20 THE COURT: -- anyway, right? So --

21 MR. GORTON: I am, Your Honor.

22 THE COURT: But again, nobody appealed it. It's the
23 law of the case, I think.

24 MR. GORTON: So I would say that the NCPA, as a rate-
25 payer creditor, represents an interest that's unique to rate-

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1 payer creditors insofar as we're going to be paying the rate
2 for so long as PG&E is a rate collector. So this means that we
3 have a special interest in not only having our claims paid, a
4 Chapter 11 interest that's normal for a creditor, but we have
5 an interest in a long-term, durable, sustainable, safe solution
6 for the exit in the PG&E Chapter 11, PG&E number II. And
7 that's an interest that I don't think is represented on either
8 committee in this case, as I look at membership.

9 THE COURT: Well, your entity might have been able to
10 be ex officio to the regular committee; right?

11 MR. GORTON: We -- I believe that the United States
12 Trustee could add a rate-payer creditor to the committee that
13 it deems appropriate, and then there would be a voice. But
14 that doesn't exist today.

15 THE COURT: No, I understand.

16 MR. GORTON: Okay. And I'm simply saying, that's an
17 interest that's not articulated by any of the -- or represented
18 by either of the committees. I think it's an important
19 issue -- interest.

20 And to your question about the rate-recoupment setoff
21 analysis, I sort of extend your hypothetical and I say, but
22 what if, as in PG&E I, when there was an effort to disaggregate
23 but not to sell -- what if a plan comes in this case -- what if
24 the debtor proposes to sell the wires? The transmission unit
25 gets sold to another enterprise. That enterprise would be the

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1 new rate payer -- I mean, sorry, the new rate collector.

2 THE COURT: Right.

3 MR. GORTON: And so my -- our ability to take the
4 refunds against future rates would be cut off, and we would
5 clearly have a right to payment claim, I believe. But that --

6 THE COURT: Well, yes, I --

7 MR. GORTON: Yeah.

8 THE COURT: -- I agree you might but, again, now we're
9 back to a plan that hasn't been filed and --

10 MR. GORTON: Oh, absolutely.

11 THE COURT: -- a concept that hasn't --

12 MR. GORTON: I understand completely.

13 THE COURT: -- been looked at.

14 MR. GORTON: I was just trying to respond to the --
15 automatically the claim goes away.

16 THE COURT: Well, but --

17 MR. GORTON: There's --

18 THE COURT: -- forget your clients and go back to my
19 ten-dollar -- five-dollar credit for Mr. Harris. Doesn't that
20 go away? Do you think -- do you think my analysis was
21 incorrect that on the petition date, if he had a hundred-dollar
22 bill, that -- but he only has to pay ninety-five, the credit's
23 gone.

24 MR. GORTON: If all I had on bankruptcy day was a
25 five-dollar refund and on day -- month following I got it back,

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1 I got paid.

2 THE COURT: That's right.

3 MR. GORTON: I agree. I agree with that, Your Honor.
4 Can't argue with that.

5 THE COURT: Okay.

6 MR. GORTON: But just wanted to help the Court recall
7 that we have a long-term interest --

8 THE COURT: Well, the anomaly here, or the irony, is
9 that you make a persuasive argument for not being able to be on
10 a committee that I have to decide whether I can appoint,
11 because you can't -- your client cannot be on the committee.
12 And the best you could hope for would be an ex officio. But
13 the point is you might very well end up being ex officio on the
14 existing committee if the United States Trustee is persuaded to
15 do so. Again, I'm -- you'll have to decide whether that's
16 worth the trouble. I'm not going to --

17 MR. GORTON: Fair enough.

18 THE COURT: -- get there. Thank you very much for
19 your --

20 MR. GORTON: Thank you, Your Honor.

21 THE COURT: -- contribution.

22 All right, I guess it's time to hear from your side,
23 Mr. Karotkin. Are you doing the duty today or someone else?

24 MR. KAROTKIN: I am.

25 THE COURT: Okay.

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1 MR. KAROTKIN: Thank you, sir.

2 THE COURT: And the U.S. Trustee and both committees
3 are going to -- they going to be weighing in or not? Have you
4 agreed to share some time with them?

5 MR. KAROTKIN: I think, for the first time, Mr.
6 Laffredi has enabled me to speak on his behalf.

7 MR. LAFFREDI: I'd like say something as well, Your
8 Honor.

9 MR. BRAY: Your Honor, I just want two minutes,
10 please.

11 MR. LAFFREDI: Yeah, very quick.

12 THE COURT: I'm trying to just listen for a while.

13 MR. KAROTKIN: I'll -- I think I'll be brief, Your
14 Honor, because I think, Your Honor, you put your finger on the
15 issue. The fact of the matter is that the threshold issue is
16 whether they're creditors. And they're not creditors. I
17 think, as TURN in its pleading expressly acknowledged on page
18 10, that the debtors are obligated by both, to use their words,
19 statute and regulation to credit the greenhouse-gas allowances.
20 These are automatic; they're set by the CPUC and are part of
21 the rate-making process.

22 And I think that you made another excellent point with
23 respect to the setoff issue.

24 THE COURT: See, he says I make excellent points when
25 he agrees with me but, boy, when I say something wrong, it

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1 looks like I'm reinventing the Bankruptcy Code. That's the fun
2 thing about being a judge and having good lawyers come and make
3 their argument.

4 MR. KAROTKIN: But seriously --

5 THE COURT: But it's true.

6 MR. KAROTKIN: I was serious.

7 THE COURT: No, I --

8 MR. KAROTKIN: But anyway --

9 THE COURT: -- I am too.

10 MR. KAROTKIN: So at best, at best, if they are claims
11 and they have setoff rights, again, as you well know, then
12 they're the equivalent of secured claims, not unsecured claims.

13 THE COURT: It's even more fundamental, it seems to
14 me. I seem to remember back a million years ago in law school,
15 learning about these offsetting concepts under a common-law
16 doctrine of compensatia (ph.) or something like that, that they
17 automatically offset.

18 MR. KAROTKIN: They -- and not only that; under the
19 statute -- I think it's Section 552 -- setoff rights are
20 secured claims.

21 THE COURT: Well, that's true too.

22 MR. KAROTKIN: So --

23 THE COURT: But --

24 MR. KAROTKIN: So at best --

25 THE COURT: But that proves too much, because you

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1 could have a committee of secured creditors.

2 MR. KAROTKIN: Not that --

3 THE COURT: But --

4 MR. KAROTKIN: You could, but I --

5 THE COURT: But not if they're paid. I mean --

6 MR. KAROTKIN: But not if they're paid. And I think,
7 again, you fundamentally put your finger on it again when you
8 said, well, these claims are going to be paid. And again, as
9 counsel, Mr. Harris, acknowledges in the pleadings, we have a
10 legal and statutory obligation to pay them. On the worst-case
11 basis, all of those alleged pre-petition claims, if they are
12 claims, will be paid in October. And I can assure you that
13 PG&E is not going to come into court and ask that that be
14 deferred.

15 THE COURT: Well, I assume that, if the company went
16 before the Commission to say, would you please let us off the
17 hook for October because we want to do something else, you'd
18 have to -- there'd be some consequences, one of which might be
19 you still have a little bit of a claim out there, that -- a
20 pre-petition claim.

21 MR. KAROTKIN: I can assure you that's not happening.

22 THE COURT: I --

23 MR. KAROTKIN: And moreover, San Diego --

24 THE COURT: I assume too.

25 MR. KAROTKIN: Mr. Harris referred to what San Diego

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1 Gas & Electric did. They did not apply to the CPUC to reduce
2 the charge. All they asked: that the date by which they had
3 to effect the credit be extended. So he was incorrect on that.

4 And again, if you were, again, as you said, to appoint
5 a committee based on a claim or an amount that might be payable
6 in October, you'd have to disband it in October, as a practical
7 matter.

8 THE COURT: Right.

9 MR. KAROTKIN: It doesn't make any sense whatsoever.

10 And the last thing I will say is --

11 THE COURT: Well, it seems to me it not only would not
12 make sense; it'd be counterproductive. It'd be like empowering
13 a committee that says -- it'd be like, yeah, but your term is
14 up.

15 MR. KAROTKIN: Exactly. And I think that, again, to
16 the extent that rate payers want their voices heard, they can
17 be heard, as you said in your prior decision, at the CPUC.
18 Basically what they're concerned about is rates going forward
19 and how this case is going to look, from a rate-payer
20 standpoint, coming out of Chapter 11. And that is within, as,
21 again, I think you expressly concluded in your prior opinion,
22 expressly in the providence of the CPUC, where TURN appears.
23 TURN has the ability to be paid, and that's where they should
24 voice their concerns.

25 And as all of the pleadings -- all of the opposition

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1 pleadings state, Your Honor, the creditors' committee has
2 fiduciary obligations to all unsecured creditors, including if
3 rate payers have claims to them and they acknowledge that --

4 THE COURT: To the extent that they have claims.

5 MR. KAROTKIN: To the extent they have claims. And
6 this is an extraordinary remedy they're seeking. The case
7 law's very clear on that. And they haven't carried their
8 burden.

9 THE COURT: Okay.

10 Mr. Laffredi?

11 MR. LAFFREDI: Thank you, Your Honor. Tim Laffredi
12 for the U.S. Trustee. I would echo everything Mr. Karotkin
13 said. And the U.S. Trustee also does not believe that the rate
14 payers are creditors, but I'm not going to focus as much on
15 that. I'm going to focus on the -- well, if the Court assumes
16 that they are creditors, what are we doing here?

17 And in TURN's motion, in its reply, it attempts to
18 explain, well, we need a committee of rate payers for these
19 reasons. Those papers almost entirely neglect the true
20 standard under which the Court needs to evaluate this request.
21 Is there adequate representation?

22 And as the case law indicates, the determinative
23 factor under that is are the credit -- are the committees that
24 are already in existence representative of the interests as
25 unsecured creditors? And the pleadings filed by TURN almost

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1 ignore this part. They make self-serving and conclusory
2 statements about, well, the committees are not interested in --
3 in assisting or they're not responsive to certain concerns.

4 But then, they go right into all these other reasons
5 and I think Mr. Gorton said it, these special interests that
6 TURN and the rate payers would have. For example, the payment
7 of lawyers, I mean, that's not the standard. You don't get a
8 committee just because you want your lawyers to get paid.

9 THE COURT: It's tempting, though.

10 MR. LAFFREDI: It's tempting. Right, exactly.
11 Advocating on behalf of the special interests that rate payers
12 have, the fact that rate payers are funding this case also does
13 not confer committee status. I mean, that would mean that
14 every, single bankruptcy case would contemplate a committee of
15 vendors or -- or customers. It's just not contemplated by the
16 bankruptcy code.

17 And so what we want to remind the Court is if the
18 Court is inclined to determine and make the finding that TURN
19 or the rate payers are creditors, that we need to get to the
20 next step and that's whether the committees adequately
21 represent their interests. Not these special interests or not
22 these other things that they would like as an advocacy group,
23 but rather, as unsecured creditors in this bankruptcy case.

24 And I -- I would submit, as I think the other
25 objections do, that they just have failed to do that. They

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1 have failed to meet their burden. TURN and the rate payers
2 have failed to demonstrate that. The committees that are
3 already in place, to the extent they have a claim, are not
4 adequately representing that interest.

5 THE COURT: Well, it's kind of circular, isn't it? I
6 mean, I made the statement in the 2001 decision. I used the
7 Latin term "qua", meaning "as". And so I said, as creditors --
8 they are not creditors as creditors. They are -- they are
9 parties as rate payers. Here, Mr. Harris used an example, his
10 client -- at least, TURN, claims to be a creditor. I think
11 your point is that in that qua, that role of creditor, it's
12 represented probably by the GUC.

13 MR. LAFFREDI: Exactly. That's exactly right.

14 THE COURT: And at least there's no argument that they
15 aren't.

16 MR. LAFFREDI: And I think maybe there was one
17 reference in the reply that maybe one of them has -- or some of
18 them have claims under a tort theory, too. To the extent that
19 there are tort claims, the tort committee would represent that
20 interest.

21 THE COURT: Yeah and it seems to me, from your point
22 of view, it would be unworkable if you were ordered to create a
23 new committee only of people that happen to be creditors but
24 somehow doesn't do the function of the existing two creditors'
25 committees we have.

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1 MR. LAFFREDI: Well, it doesn't -- if it's not
2 contemplated by the code, I don't know what would -- what they
3 would do.

4 THE COURT: No, no, no, that's right.

5 MR. LAFFREDI: So an additional point, Your Honor,
6 there -- and also, as the Court noted in its 2001 decision,
7 there are others who are able to come into court and make some
8 of these arguments. For example, Rule 2018, I believe, for the
9 attorney general, and then -- sorry, I lost my train of
10 thought, there.

11 THE COURT: Well, yeah, I do recall the attorney
12 general and --

13 MR. LAFFREDI: Additionally, the --

14 THE COURT: The United States Trustee?

15 MR. LAFFREDI: Well, I'm not making any promises
16 there, Your Honor. So and finally, Your Honor, 1129(a)(6),
17 this was also noted in the court's decision, any plan that the
18 debtors propose, or anyone proposes, must comply with
19 1129(a)(6). That is not an option here.

20 So the fact that there is not a specific committee
21 that is designed to negotiate that does not mean that the
22 debtor is excused from a compliance end and that any plan that
23 can be confirmed must comply.

24 THE COURT: Well, is there anything that you would be
25 aware of that either of our official committees, or the debtor,

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1 really, could say if a group of rate payers asked to
2 participate, to "sit at the table", but not in an official
3 capacity? You're sort of not involved in that either way, are
4 you?

5 MR. LAFFREDI: No, I wouldn't know that. But I don't
6 see why they wouldn't. And I mean --

7 THE COURT: I mean, we have other unofficial
8 committees.

9 MR. LAFFREDI: Exactly.

10 THE COURT: They're coming on -- there are some
11 unofficial committees in this case.

12 MR. LAFFREDI: There are, Your Honor.

13 THE COURT: Now, they are creditors, so they are --
14 it's easy to pay and I guess the difference is they don't bring
15 the label of fiduciary with them --

16 MR. LAFFREDI: Right.

17 THE COURT: -- that would go with the official
18 committee.

19 MR. LAFFREDI: Well, I mean, now we have TURN. TURN
20 is -- their whole function, it sounds like, is to represent
21 these interests. They have a claim now. They could come to
22 the table and do this negotiation, if they would like. But
23 just because there's no committee that's designed to do that
24 without -- on top of some other interests as an unsecured
25 creditor or other creditor, it doesn't mean that there's no

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1 negotiation.

2 THE COURT: Okay.

3 MR. LAFFREDI: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Laffredi.

5 Either of the committees, Mr. Bray, do you want to --
6 and is the tort committee going to be heard today, too? Are
7 you doing the heavy lifting for both committees today?

8 MR. BRAY: I would never speak for Ms. Dumas.

9 THE COURT: Whatever.

10 MR. BRAY: Your Honor, I just want to follow up on a
11 couple comments particularly made by the U.S. Trustee as to the
12 motion and the creditors' committees views on this. Whatever
13 status you want to confer there, setoff, right credit, whatever
14 it is, it certainly, in our view, doesn't rise to the level of
15 a separate committee. To the extent that the rate payers are
16 concerned about payment of their claims, and I think I heard
17 the term "safe and sustainable" PG&E or a new utility.

18 THE COURT: I think Mr. Karotkin was saying --

19 MR. BRAY: I can assure the Court we have a very
20 diverse committee. We have labor, we have vendors, we have
21 suppliers, we have pensioners represented. We have
22 counterparties to executory contracts. We have long-term
23 providers of capital.

24 All of our constituency is focused on the same issues:
25 payment of unsecured claims and the safe and sustainable entity

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1 post reorganization. That's our focus. We have no -- there's
2 no divergent of interest with any creditor group on that
3 matter. I think we've been very clear with the Court about
4 that. You know, there are pleadings that we filed and we think
5 that we're more than capable, as fiduciaries, to claimants who
6 do have -- or creditors who do have claims of representing
7 their interests in a satisfactory manner.

8 The only area I see where there's a possible
9 divergence has nothing to do with the debtor-creditor
10 relationship that the committee should be based upon. It's the
11 notion of raising the rates with the rate payers, which I
12 understand may be an issue. But that's certainly not an issue
13 for an official committee in a bankruptcy court to decide. I
14 think the Court was focused on this in its previous decision.
15 We're focused on the debtor-creditor relationship, here.
16 That's really outside the bounds of a debtor-creditor
17 relationship.

18 THE COURT: Yeah, I don't know that I articulate it
19 that same way, but it seems to me that's what we do, that we
20 do --

21 MR. BRAY: Exactly.

22 THE COURT: -- debtor-creditor rights and
23 (indiscernible) in the case of an insolvent state, equity
24 holders. And an insolvent state, which is the more typical
25 cases that we handle every day, that's whose rights we're

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1 dealing with. We don't deal with divorces and we don't deal
2 with parentages and we don't deal with, you know, other kinds
3 of relationships very much.

4 MR. BRAY: I agree with that, Your Honor. It goes
5 back to our discussion about FERC.

6 THE COURT: The customers -- I mean, the person
7 who's --

8 MR. BRAY: That's what FERC does. They deal with
9 regulatory issues. CPUC deals with those issues. We're here
10 to deal with the debtor-creditor relationship. And again, just
11 to close, we're more than comfortable that we can adequately
12 represent all creditors' interests with respect to those
13 matters.

14 We think we have a diverse committee that can take
15 into account all the views that are properly taken into
16 account, irrespective of Chapter 11 process. And if we think
17 that there is a concern there, we would certainly raise it with
18 the Court or the U.S. Trustee.

19 THE COURT: Okay.

20 MR. BRAY: Unless you have any questions, I'll stand
21 down.

22 THE COURT: No, I don't. Thank you, Mr. Bray.

23 So am I right? We are not going to hear from the TCC
24 side? Ms. Dumas, did you want to say anything? You did file
25 something.

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1 MS. DUMAS: I would, Your Honor. Thank you. Cecily
2 Dumas, Baker Hostetler on behalf of the Official Committee of
3 Tort Claimants. The committee has elected not to take a formal
4 position, with respect to the motion. It's sympathetic to the
5 concerns of the rate payers, particularly in the event that
6 this turns out to be an estate that may be insolvent. And the
7 cost of the wildfire losses get past, in part, through to rate
8 payers. The Official Committee of Tort Claimants represents
9 probably the largest group of customers of PG&E. So we are
10 customers, not in our capacity here, as rate payers --

11 THE COURT: Right.

12 MS. DUMAS: -- but we are local. We are the
13 communities. We've also considered the technical legal issues
14 that Your Honor has raised with the Court. An for those
15 reasons, we've elected to simply not take a position.

16 THE COURT: Okay. Thank you, Ms. Dumas.

17 All right, Mr. Harris, you have the closing comments.
18 And then I'll take the matter -- and at this time I'm also
19 going to take under advisement -- I want to give this a thought
20 and I hope to issue a written decision on this one sometime in
21 the very near future. But go ahead and make your closing
22 comments.

23 MR. HARRIS: Thank you, Your Honor. I can see that a
24 steep slope became a bit harder to climb over the course of
25 this argument. But --

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1 THE COURT: Well, sometimes that's what it's all
2 about, right?

3 MR. HARRIS: I do have some comments, though, Your
4 Honor. First, you know, I appreciate Your Honor simplifying
5 things down to a hypothetical. But there is another point for
6 claims besides the GHG allowances. It's the wrongdoing that
7 PG&E engaged in that is subject to investigation by the CPUC,
8 tens of millions of dollars. And this is set forth at pages 5
9 through 6 of my brief. Misrepresentations with regard to
10 communications about the San Bruno fire, explicit
11 misrepresentations about where and when permits are issued for
12 excavation.

13 I mean, we're talking about a very substantial claim
14 here that would go to rate payers. That's not something that's
15 going to be paid, necessarily, by October. We don't know when
16 it's going to be fully adjudicated. But it exists and it
17 continues. And I would note that there is no bar date for
18 claims yet, so we don't know the full extent of what claims for
19 rate payers might be. I did note that in the debtors' motion,
20 they said that rate payers need not file claims. But I suspect
21 we will.

22 THE COURT: But I mean, again, don't you think the
23 reason why rate payers don't file claims is because the
24 debtors' position is they're not creditors?

25 MR. HARRIS: And I disagree with that. I think we are

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1 creditors.

2 THE COURT: Well, I understand. And what do you do in
3 a case where you aren't listed as a creditor and don't -- and
4 the debtor says I don't owe this person anything? You file a
5 claim --

6 MR. HARRIS: Exactly.

7 THE COURT: -- if you believe you're entitled to it.
8 And if you file a frivolous claim, there are consequences. And
9 if you file a claim with a basis, then you've done all you can
10 do at that point.

11 MR. HARRIS: Sure. And I don't want to speculate, but
12 it could --

13 THE COURT: But again, but what if -- I mean, I've
14 read your papers. Let's focus on the San Bruno fire. If the
15 San Bruno fire was -- and following the San Bruno fire, there
16 was some mischief by PG&E individuals or the company and that
17 gives rise to what, in terms of bankruptcy terms? A claim?

18 MR. HARRIS: It could be -- it is a claim and it could
19 be paid in any number of ways.

20 THE COURT: Right.

21 MR. HARRIS: It could be a statement credit. It could
22 be a cash payment.

23 THE COURT: But it's a claim.

24 MR. HARRIS: It is a claim.

25 THE COURT: And the person who owns the claim is

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1 somebody who has been harmed by the conduct. Now the perfect
2 example, obviously, would be just like the -- the 2017 and 2018
3 fire victims. There are, or were, San Bruno fire victims. If
4 they have -- if they didn't have claims -- I mean, if their
5 claims still exist, they'd be creditors. They wouldn't have
6 claims as rate payers. Why do you think it's different now?

7 MR. HARRIS: Because these are separate claims that
8 are owed to the rate payers generally for misconduct for --

9 THE COURT: But how does the misconduct --

10 MR. HARRIS: -- essentially damage the public.

11 THE COURT: -- harm the person in the role of a person
12 who pays a rate, a person who purchases services?

13 MR. HARRIS: Your Honor, it's essentially a penalty
14 for failure to comply with applicable utility law. And it's
15 paid out to the state's general fund. It's paid out to
16 particular cities listed in my papers. And it's paid out to
17 the rate payers. So it's hard to say there's really a basis
18 for an offset here at this point. It's completely unliquidated.
19 The parties are just so different.

20 But I'd like to move on. You had a very specific
21 question about can the credit -- the five-dollar credit be
22 exceeded by a rate payer who has a small bill and the answer is
23 yes. A specific example would be a solar-enabled rate payer,
24 whose net energy use doesn't create a bill. PG&E still owes
25 the rebate. So I know that's a very granular point, but you

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1 asked if it was possible --

2 THE COURT: No, I understand. I understand the point.

3 MR. HARRIS: -- that the credit could be issued.

4 THE COURT: I mean, you'd have -- I guess even the
5 people with solar sometimes are borrowing gas from the same
6 utility. But leaving that aside, you know, we get the ads for
7 don't have to pay your bill anymore, buy solar. But therefore,
8 what? I mean, that -- are you entitled to a rebate if you
9 don't pay anything? Is that what you're talking about?

10 MR. HARRIS: You are.

11 THE COURT: Okay.

12 MR. HARRIS: That's exactly right.

13 THE COURT: Okay.

14 MR. HARRIS: So there is a rate dependent --

15 THE COURT: So when was it paid? If I went all solar
16 on January 29th and suddenly I think, God, I never have to pay
17 another PG&E bill, I would've gotten my refund in April?

18 MR. HARRIS: I would assume that --

19 THE COURT: Or October? Then I'm done, right?

20 MR. HARRIS: I would assume that PG&E will have to
21 issue checks April, October or at some point, but I'm -- I
22 don't know when.

23 THE COURT: But you heard my discussion with Mr.
24 Karotkin. Even if you are a creditor for that temporal time,
25 you're going to stop being a creditor because as a matter of

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1 law, your claim's going to be paid, notwithstanding the
2 bankruptcy.

3 MR. HARRIS: That's correct, Your Honor.

4 THE COURT: I mean, it's in effect. It's in effect of
5 preference of a special class of creditor that's going to get
6 paid even if there's never a Chapter 11 plan, right?

7 MR. HARRIS: Well, it's not dissimilar to the spouse
8 who's owed alimony maintenance or support. There's a periodic
9 obligation. They have to be paid. But that doesn't mean
10 they're not creditors, Your Honor. That doesn't mean they
11 don't have a right to participate in the case.

12 I do want to move on to Mr. Karotkin's point. I don't
13 agree, for the reasons that we've just been talking about, that
14 my clients are not creditors. There are the rights from the
15 San Bruno fire and the ground excavation violations that we
16 talked about. I don't think it's counterproductive to have a
17 committee that has a time limit. I think that this case needs
18 to resolve relatively quickly. And to think that we're not
19 going to have a plan by next October is problematic for me. To
20 remove the voices from the rate payers, at this stage, when
21 they could be heard, at least on an official basis, would be
22 greatly beneficial. And I think it would streamline these and
23 speed up this case.

24 Your Honor, I think it's important to look -- and we
25 really never got to this, about what a rate payers committee

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1 would do. You know, we've heard a lot of talk about, well,
2 everything's all about 1129(a)(6), that that essentially
3 preempts any concerns the rate payers might have. But the rise
4 in rates is not solely considered at the time of the plan.
5 Your Honor, if you --

6 THE COURT: Well, but if it is considered, who
7 considers it?

8 MR. HARRIS: Well, it's the impact of what happens in
9 this court.

10 THE COURT: Not the bankruptcy court.

11 MR. HARRIS: Let's say you, Your Honor, decide that
12 you have jurisdiction over Section 365 and not FERC. And --

13 THE COURT: Well, no. The issue is whether I share
14 it --

15 MR. HARRIS: You share. Okay, whether the contract --

16 THE COURT: -- not that I don't have some of it.

17 MR. HARRIS: -- whether the contract is rejected and
18 the financial consequences of that.

19 THE COURT: Okay, right.

20 MR. HARRIS: And the restructuring of those contracts
21 may well be an integral part of this reorganization.

22 THE COURT: Okay.

23 MR. HARRIS: That will effect rates and it will never
24 come before the CPUC under 1129(a)(6).

25 THE COURT: Well, I don't know that. I don't know if

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1 that's true or not. Because if there's a number of rejections,
2 that might give rise to substantial damage claims. I don't
3 know. I mean, I'm not able to -- and it's not my job to figure
4 out what's the CPUC's role, if there's a contract rejection.
5 So you're suggesting that there may be consequences that aren't
6 framed by the four corners of Section 1129 of the code. That
7 may be true. But 1129 is the only successful door out, you
8 know?

9 There are only -- if you come into Chapter 11, there
10 are only three ways out. It's like the roach motel. You go
11 in -- or two. Chapter 7 or out, or dismissal. You know, what
12 I'm saying.

13 MR. HARRIS: Yes, Your Honor.

14 THE COURT: But the point is, no matter which way
15 you're there, the bankruptcy court doesn't get involved in
16 fixing rates. Authorizing rejection of a contract allows
17 consequences, but not rates.

18 MR. HARRIS: I understand, Your Honor. But the point
19 is that there may be consequences that the rate payers would
20 want to be heard on here, saying okay, if we do this, the
21 result is X. And if we do that, the result is Y. And that's
22 part of why we need to be heard on this side of the regulatory
23 divide. It's critical that rate payers be able to comment on
24 everything that happens here, because very little of what
25 happens here is considered there.

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1 THE COURT: Okay, so let's suppose we get a great big
2 PPA and leave aside the FERC issue, because that -- I don't
3 want to go there today. Let's suppose we have a substantial
4 executory contract that the debtor moves to reject. And I'm
5 asked to grant that motion or deny it. And you're come to the
6 podium and you're representing the rate payers. What's your
7 frame? How do you frame whatever position you want? Whether
8 you want me to reject it or assume it, how do you articulate
9 that position?

10 MR. HARRIS: Well, Your Honor, the rate payers may
11 wish to be heard on a cost basis, on the impact on cost. They
12 might wish to be heard on how it effects the overall power mix
13 in the state and how the contract is restructured and what
14 impact it will have down the line on the other power producers.
15 You can see that there's a wealth of things that this court may
16 actually want to consider before it gets over to the CPUC, if
17 it gets to the CPUC. We don't know that that's going to
18 happen. There's no transparency. And Ms. Sheriff would talk
19 about that, if asked. There's zero transparency as to what is
20 going on here when you look at it from the CPUC point of view.

21 Your Honor, I want to close with this. I certainly
22 appreciate that the creditors' committee wishes to say that it
23 is a welcoming place for rate payers. We really don't see it
24 as that. They just have different interests than us. It is
25 certainly true that to the extent that there's just purely a

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1 question of payment of an unsecured claims, the narrow
2 adjustment of the debtor-creditor relationship.

3 Yes, we share interests there. But the interests of
4 rate payers, the diversity of what the rate payers may wish in
5 these cases can greatly differ from what the committee has
6 already said. The committee says we don't have claims. The
7 committee says if we do have claims, they're going to get paid
8 anyway, so it's safe to ignore us. The rate payers have
9 concerns, Your Honor, that even if we were appointed and
10 granted a seat on the committee, we don't think that it would
11 be sufficiently representative. If you have any other
12 questions, Your Honor, I'm happy to answer them.

13 THE COURT: No, I don't. And I appreciate all sides
14 in the argument and the oral presentation, the written
15 presentation. I compliment you all for doing that and the ball
16 is in my court to figure out what to do. I will do my best to
17 issue a written decision as promptly as I can. I can't promise
18 you it's -- what day it's going to be. I'll do my best to do
19 it quickly.

20 MR. HARRIS: I look forward to it, Your Honor. I
21 know things are busy in here.

22 THE COURT: Thank you. Thank you all for your time.
23 And I believe we're finished. And Mr. Karotkin, unless you
24 have any follow-up, any housekeeping?

25 MR. KAROTKIN: No, we're done. Thank you very much.

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1 THE COURT: Okay. I'll see you all next month. No,
2 on the 22nd, on our next calendar. Thank you. Thank you.
3 Have a good day everyone.

4 (Whereupon these proceedings were concluded at 12:41 PM)
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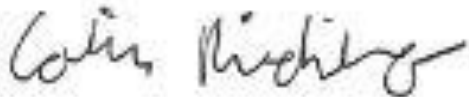
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C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ COLIN RICHILANO

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Phoenix, AZ 85020

Date: May 10, 2019

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